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# Liability for Allowing Drunk Driving: The Death of Personal Responsibility?

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It used to be that friends wouldn't let friends drive drunk because they cared about their friends. Today, it's become a legal obligation. In the 1998 Seinfeld series finale, Jerry, George, Elaine, and Kramer witness a car-jacking and rather than helping the victim, make fun of his corpulence. The four are arrested and jailed for violating mythical "duty to rescue" laws which require bystanders to help out in such a situation. How times have changed. Life imitates art. Political correctness and a Big Brother version of the Good Samaritan Rule have infected American society to the point where letting a friend – or anyone for that matter – drive drunk, could result in criminal and/or civil liability. Civil tort liability has become a sitcom. Trial lawyers like Seinfeld's Jackie Chiles celebrate this trend while the rest of civilized society simply scratch our collective heads in confusion and dismay.

Earlier this month, two 17-year-old boys were arrested in Connecticut on misdemeanor charges on the grounds that they knew their friend Jane

Modlesky, also 17-years-old, was too drunk to drive when she got behind the wheel of a SUV before crashing into a tree and dying. Modlesky's single-vehicle accident occurred less than half a mile after she dropped off the two boys at home. Her blood alcohol level was more than 13 times the legal limit for someone under the age of 21. If the boys' failure to prevent Jane from driving while drunk constitutes a crime, it also means that they had a duty to take action. This means that there is likely a corresponding civil duty to prevent another person – friend or stranger – from driving drunk, if there is both the opportunity and ability to do so.

The case of Jane Modlesky raises questions about the potential civil liability for the inactions of innocent bystanders who fail to take action to prevent friends – or even strangers – from drunk driving. And, of course, where there is civil liability, there is insurance which may be called upon to pick up the tab, and all of the usual coverage questions that go hand-in-hand with a failure to act which could be negligent – or intentional. Most states already have some legislation or case law dealing with dram shop liability, the legal principle that anyone who profits from the sale of alcoholic beverages by providing alcohol to an obviously-intoxicated individual should be held liable for any resulting damages caused by their actions – even if the victim is the patron himself. Nothing gets the Jackie Chiles of the world going like alleged “evil empires” with deep pockets — big tobacco manufacturers, gun manufacturers and profitable corporations are always at the top of the list. The alcohol industry is quickly moving to the top of the list.

An overview of the dram shop laws of each state is beyond the scope of a simple article, but is contained in our book, *Automobile Insurance Subrogation in All 50 States*. While each state's laws vary, most dram shop laws cover serving alcohol to a minor. States such as Alabama, Alaska, and Michigan limit liability to cases involving serving a minor. Some states, like Maryland, acknowledge the personal responsibility of the patron and have no dram shop statutes. They state that there is no cause of action for injuries to third parties caused by an intoxicated person. *Felder v. Butler*, 438 A.2d 494 (Md. 1981). Dram shop laws certainly toy with the complete abdication of personal responsibility, but liability under those laws is based on an affirmative, negligent act – serving a minor or over-serving an adult. Liability for failure to stop somebody from doing something reckless or

failing to rescue others from poor personal choices is completely foreign to American jurisprudence.

In civil cases, a plaintiff has the burden of showing the following elements:

1. The defendant had a duty;
2. The defendant breached that duty;
3. The breach of duty proximately caused damages; and
4. The damages sustained by the plaintiff.

The success of a negligence case depends on whether the defendant owed a duty to the plaintiff. Such a duty arises when the law recognizes a relationship between the defendant and the plaintiff and, due to this relationship, the defendant is obligated to act in a certain way toward the plaintiff. A judge, rather than a jury, ordinarily determines whether a defendant owed a duty of care to a plaintiff. Therefore, in the above unusual examples, it is possible for a court to prevent such bizarre cases from even reaching a jury. However, judges are human. If a reasonable person would find that a duty existed under a particular set of circumstances, the judge will usually so instruct the jury. Find a judge who has lost a loved one to a drunk driver and you may see a case like this given to a jury. And, as we all know, once that happens, all bets are off.

In most English-speaking nations, there is no duty to come to the rescue of another and no liability for doing nothing while another person is in peril. Two exceptions are: (1) when the person who fails to act himself created the hazardous situation or circumstances, and (2) where there is a special relationship. Examples of a “special relationship” include emergency workers (firefighters, EMTs, etc.), common carriers (buses, trains, airlines, etc.), employers and employees, property owners and invitees, spouses, etc. Ten states – and not by coincidence ten of the more “plaintiff-friendly” states – also have laws which require that a person at least notify law enforcement and seek aid from others for strangers in peril. Those states include California, Florida, Hawaii, Massachusetts, Minnesota, Ohio, Rhode Island, Vermont, Washington, and Wisconsin. The creation of a duty to prevent somebody from driving drunk will likely be established in a case in

which the person who fails to act was somehow complicit in the intoxication of the drunk driver.

We are slowly relieving individuals of the responsibility of making sensible choices in life. Instead of holding each other accountable when something goes wrong, we try to structure society to guarantee that nothing untoward ever happens. We fabricate excuses and replace human choices with legal prescriptions. It is no coincidence that the United States, which is bending over backwards to ensure that every wrong has a remedy and its citizens are never exposed to any of the inevitable consequences of their actions, is the home to nine out of every ten lawsuits filed on Planet Earth.

The insanity of holding somebody liable for failing to prevent somebody else from doing harm to themselves or others, even at the risk of endangering the life of the person who fails to act, stretches beyond credulity of the Biblical notion of “brother’s keeper.” A man was arrested for false imprisonment when he locked his intoxicated wife in the house to prevent her from driving. A woman who disabled a friend’s vehicle to prevent drunk driving was considered to have committed a crime. Knowing someone is “drunk” is one thing, knowing an “accident” will happen is another. Placing the burden of knowing the difference on the innocent bystander under threat of civil liability is nothing more than a morally-indefensible redistribution of responsibility. To substitute a person’s judgment over what is best for him or her with the judgment of another person is inviting even more lawsuits. What if the potentially drunk driver is tackled or injured during restraint in order to prevent him or her from driving? In the case of Jane Modlesky, can you imagine the media’s treatment of two boys trying to control the actions of a young woman who later sues them for assault? Oh, what a tangled web we weave.

Imposing liability on a person for failing to inject himself as a surrogate parent into the life of another person, strangers and friends, is a bad idea. It opens a Pandora’s Box of devastatingly-bad legal precedent. Our laws reflect our society and, as a society, we are witnessing the slow death of personal responsibility. The 2,000-page Affordable Care Act, virtually-limitless unemployment benefits, debtor-friendly bankruptcy laws, and fair debt collection practices laws, which make it difficult to collect money

owed, all contribute to a legal environment which facilitates the death of personal responsibility. In its place, today's progressive legal agenda has substituted a "collective" view of responsibility as superior to the traditional "individual" perspective on it. Lawsuits are filed against gun manufacturers seeking damages caused by criminals who use guns. The fast food industry must defend lawsuits filed because some people do not know when to stop eating. If you steal, it is because of socioeconomic forces. If you become a teenage mother, it's because you didn't receive enough sex education or a lack of economic opportunity. If you murder someone, it's because of easy gun access, violent movies, violent video games or bullies who picked on you too much on the playground.

Psychiatrists will continue to provide forensic testimony about the ability of a patient to know the difference between right and wrong. Philosophers will continue to debate Free Will versus Determinism. Lawyers will continue to argue for the guilt or innocence of the accused; but, the simple fact is that a society which is organized on a set of laws that do not include the important role of personal responsibility and the inevitability of bad consequences for bad actions, will not survive. Everyone must be held responsible for their own actions, and no one should ever be held responsible for the acts of another. Turning back lawsuits which try to impose civil liability for failure to prevent another person from making questionable personal choices, including getting in a car drunk, is a meager but necessary first step to reclaiming the important concept of personal responsibility. As Eleanor Roosevelt said, "In the long run, we shape our lives, and we shape ourselves. The process never ends until we die. And, the choices we make are ultimately our own responsibility."

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