

Tort Law: Negligence

Case 10:  
Underage  
Drinking

# Tobin v. Norwood Country Club, Inc.

## **Duty of Care to Refrain from Serving Alcohol to Minors**

### **OBJECTIVE**

To understand in a negligence action what the duty of care is for business owners who serve alcohol to customers.

### **TOPICS COVERED**

- Dram Shop Act
- Duty of Care
- Reasonable Care

CASE: 10

# Tobin v. Norwood Country Club, Inc.

## Duty of Care in Refraining from Serving Alcohol to Minors

### BACKGROUND

- The Defendant, Norwood Country Club, is a commercial establishment that serves meals and alcoholic beverages to the general public. It also makes its facility available for private parties by special arrangement.
- A teenage girl became severely intoxicated at the club, which was hosting a party for her boyfriend's family. After fighting with her boyfriend at the club, she left on foot, and, while speaking with her friends who were urging her to get into their car, was struck by a vehicle in the middle of the highway. The minor's blood alcohol level was recorded as .229—nearly three times the legal limit of .08.
- The Plaintiff, the family of the deceased teenager (John M. Tobin, Administrator of the Estate) sued the club following the death of a teenage girl utilizing the Commonwealth of Massachusetts' Dram Shop Act.
- The minor's family alleged that Norwood Country Club was negligent in breaching its duty of care owed to their daughter since it knew or should have known that minors were drinking alcohol during the party.

### BEFORE YOU BEGIN

#### What is a Dram Shop Act?

A Dram Shop Act creates liability for liquor stores and other commercial establishments that serve alcoholic beverages to minors. Dram Shop Acts establish liability of establishments from the sale of alcohol to minors where said minors are injured or cause injury to third parties.

#### What is the duty of care?

The duty of care is the first of four elements that a plaintiff must prove to establish a negligence action against a defendant. The duty of care element requires proof that the defendant owed the plaintiff a duty of care to protect him/her from harm. The amount or level of care owed by the defendant to a plaintiff is qualified by the type of relationship the parties are engaged in: such as, lawyer-client, physician-patient, employer-employee, and in this case, landowner-invited guest, otherwise known as a business invitee.

#### What is reasonable care?

Reasonable care is the obligation of a person to behave as a reasonably prudent person using the ordinary degree of care required in the circumstance.

## ISSUE BEFORE THE COURT

Whether an establishment serving alcohol has a duty to use reasonable care to refrain from selling or making alcohol available to minors where the establishment knew or should have known that minors were on the premises and were attempting to drink alcohol.

## THE FACTS

The Defendant, Norwood Country Club, is a commercial establishment located in Norwood, Massachusetts that serves meals and alcoholic beverages to the general public. It also makes its facility available for private parties by special arrangement.

On the night in question, a Norwood Country Club employee, Paul Moran, organized a family reunion to be held in a private room at the club. The party lasted from 7 pm to after midnight. The party had approximately 100 guests, including six minors, with assigned seating at eight tables. The deceased teen, a 17-year-old female, was the girlfriend of a family member who was 16 years of age.

Paul Moran, a family member and full-time bartender at the club, reserved the room free of charge. The family paid the club for the drinks consumed at the party and paid for a caterer to supply the food.

Michael Mercer was the club's bartender supervisor. Mercer approved Moran to use a room at the club for his private function free of charge, although he was unaware that Moran was drinking alcohol that night. Mercer acknowledged that minors were present at the party.

At 9 pm that evening, Moran told Mercer to go home and he would take responsibility for the private party room. Moran asked family members to help him police the party to make sure there was no underage drinking.

Patricia Erwin, the bartender on duty that night, could not see the private party room from the bar. That night, she served drinks to party and public guests. She did not enter the private party room during the evening to check if there were any alcohol-related problems. Erwin explained that although this was part of her normal practice,

The penalty for selling alcohol to a minor varies by state, but usually includes a fine, a warning, or in the case of an individual buyer, a license suspension.

she believed Moran was in charge of that responsibility.

While the club had a policy of serving only two drinks at a time to a customer, it came out at trial that many customers from the family party came away with several drinks in hand to take to the function room.

Erwin testified that she neither served anyone who appeared to be a minor nor saw anyone she did serve hand a drink to a minor. One of the teenagers at the party contradicted this testimony and stated that on at least three occasions, he helped two adults by carrying multiple drinks (on one occasion between 9 and 12 Sea Breeze vodka drinks) from the bar.

Further, witnesses testified that many of the teenagers seemed drunk by the end of the party and their tables contained several empty and half-empty glasses of pink liquid that is consistent with the color of a Sea Breeze vodka drink.

At the close of the party, the decedent had an argument with her boyfriend and left the club alone. She walked down the breakdown lane of the highway near the club's location. Several teenagers left the party in a van in search of a place to continue their drinking. When they encountered the decedent walking in the breakdown lane, they stopped the van and tried to persuade her to get into the van. When she refused and continued walking, the van followed, pulled ahead of her and stopped. The decedent walked in front of the van, pounded on the front hood and then veered diagonally toward the center of the highway. She was struck by a passing vehicle and suffered the injuries from which she died two days later. The decedent's blood alcohol level two hours after the accident was .229, nearly three times the legal limit of .08.

The first Dram Shop Act was passed in Illinois in 1872.

The term dram shop refers to a shop where "spirits" are sold by the "dram," a small unit of liquid.

#### Sources

The case briefing above contains excerpts and direct extractions from the sources noted below that have been combined with the author's own expert legal input. The case has been condensed and formatted from its original content for purposes of this workbook.

Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 661 N.E.2d 627 (1996).  
Supreme Judicial Court of Massachusetts, Suffolk  
February 22, 1996. Opinion written by the Honorable Justice Charles Fried.

## Review the Case

After reading Tobin v. Norwood Country Club, Inc., answer the following:

1. Identify the Plaintiff(s) in the case.

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2. Identify the Defendant(s) in the case.

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3. Is/Are the Plaintiff(s) seeking money as compensation for their damages?

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4. Who rented the room for the party?

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5. Did the party pay for the room? If not, explain.

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6. What were the party organizers responsible to pay for?

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7. What was Norwood Country Club's policy on the number of drinks served to a customer at any one time? Was this policy followed? Give specifics.

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8. Did Norwood Country Club know minors were at the party?

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NAME \_\_\_\_\_

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### **Review the Case (continued)**

- 9.** Did Norwood Country Club know the minors were drinking alcohol? If not, what facts illustrate that the club should have known?

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- 10.** Who is Paul Moran, and what was his "role" at the party?

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- 11.** What actions did Paul Moran take to prevent underage drinking at the party?

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- 12.** Who is Patricia Erwin, and what actions did she take to prevent underage drinking?

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- 13.** What was the decedent's blood alcohol level two hours after her death?

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- 14. BONUS:** In your opinion, was the deceased teenage girl responsible or partially responsible for her own fate in this case?

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## Make the Argument

In order for the judge or jury to render a decision, the following are some of the questions that must be considered:

1. Did Norwood Country Club owe a duty of care to the minor?

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2. Was the duty of care breached? Explain.

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3. Was the breach of the duty of care the actual cause of the injury to the minor? In other words, *but for* the club serving alcohol to the minor to the point of intoxication, would she have walked into the middle of the street and been killed by oncoming traffic? Explain.

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4. Was the death of the minor a reasonably foreseeable result of the club's failure to control the underage drinking at the party? In other words, by failing to prevent underage drinking at the party, was it reasonably foreseeable that the teenage girl would drink to the point of intoxication and later be injured? Explain.

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5. Did the minor contribute to her own death in any way? If so, please assign a percentage of liability to her for her actions. Explain.

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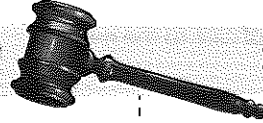
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### You Be the Judge

Having reviewed the case and considered the questions involved, decide the case for either the **Plaintiff** or the **Defendant**:

**Decision for the Plaintiff**

**Decision for the Defendant**



**John M. Tobin, Estate Administrator**

**Norwood Country Club, Inc.**

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