

Tort Law: Negligence  
and Strict Liability

Case 9:  
Grain  
Alcohol and  
"Fire Play"

# Selwyn v. Ward

## Duty of Care in Negligence and Strict Liability Actions

### OBJECTIVE

To understand the concept of negligence and strict liability as it relates to the sale of alcohol to minors where injury was caused by "fire play."

### TOPICS COVERED

- Dram Shop Act
- Negligence Action
- Strict Product Liability
- Ultrahazardous Activity

CASE: 9

# Selwyn v. Ward

## Duty of Care in Negligence and Strict Liability Actions

### BACKGROUND

- A minor, Taylor Ward, was hosting a teenage party in a barn located in the back of his parents' house where partygoers were drinking and using illegal drugs.
- The Plaintiff, Bridget Selwyn, a teenage girl, was injured at the party when one of the teenagers poured a bottle of Everclear grain alcohol onto an open fire, which exploded.
- A minor, Lauren Andrews, not present at the party, purchased the bottle of Everclear from RC Liquors, Inc. several weeks prior to the incident.
- Relying on the R.I. Dram Shop Act, the Plaintiff sued, among others, RC Liquors for selling alcohol to a minor alleging (a) negligence and (b) strict liability. Under her negligence theory, Selwyn alleged that RC Liquors breached its duty of care when it sold grain alcohol to Lauren Andrews because it knew or should have known of the "fire play" linked to grain alcohol. Under her strict liability theory, Selwyn stated that selling alcohol to minors is an ultrahazardous activity.

### 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 are the factors to consider in a Negligence action?**

To win a negligence case, the Plaintiff must establish a duty owed by the Defendant to the Plaintiff, a breach of that duty, proximate cause between the conduct and the injury, and actual loss or damage.

**What is Strict (Products) Liability?**

In a strict liability lawsuit, Plaintiffs claim that their injuries are proximately caused by some ultrahazardous or abnormally dangerous activity of the Defendant.

**What is an "ultrahazardous" and "abnormally dangerous" activity?**

An ultrahazardous and abnormally dangerous activity is one that is so inherently dangerous that a person engaged in such an activity should be held strictly liable for injuries caused to another person—even if the person engaged in the activity took every reasonable precaution to prevent others from being injured. To determine whether an activity is ultrahazardous or abnormally dangerous, courts consider various factors: (a) the risk of harm to others, (b) the likelihood that the harm that results from it will be great, (c) the inability to reasonably eliminate the risk by exercising reasonable care, (d) the commonality of the activity, (e) the inappropriateness of the activity, and (f) the value of the activity to the community.

## ISSUE BEFORE THE COURT

Whether the Defendant breached its duty of care when it sold grain alcohol to a minor because it knew or should have known of the link between grain alcohol and “fire play.”

Whether the Defendant’s sale of grain alcohol to a minor is an ultrahazardous activity, warranting application of strict liability.

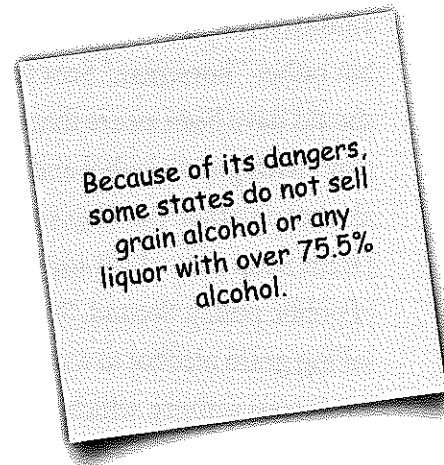
## THE FACTS

“It’s an all too familiar scenario—a group of high school students manages to obtain some alcoholic beverages, act irresponsibly, and someone gets hurt.” In this version, however, the injuries did not result from the consumption of illegally obtained alcohol but from a minor igniting it and causing an explosion. The Plaintiff, Bridget Selwyn, was the victim in this tragedy and sought to recover for her injuries from several named Defendants, including RC Liquors, Inc.

In the early morning of August 26, 2000, the Plaintiff and several others gathered at the home of Karen Ward (Ward) in Warwick, Rhode Island. The Ward property included an outbuilding, referred to as “the barn,” in which Ward’s son, Taylor, and his friends often socialized. On the night of the incident, the gathering at the barn included Bridget Selwyn, Taylor Ward, Michael A. Buonanno, and several other teenagers.

Various people at the party were smoking marijuana and/or ingesting ecstasy in the barn. There was also a partially consumed 1.75 liter bottle of 190-proof grain alcohol or “Everclear” at the party. The bottle had a large label on it that stated, “Warning! Extremely Flammable.” At about 4:30 am on August 26, 2000, the bottle of Everclear became the catalyst for disaster when Buonanno poured some of the grain alcohol onto an open flame, causing an intense explosion that burned Selwyn.

The bottle of Everclear was not purchased by Buonanno, but by another teenager, Lauren Andrews. She purchased the Everclear for a gathering at the barn the previous month. Andrews purchased the Everclear at RC Liquors and stated at trial that she was never asked for identification to prove she was over 21 years of age—the



legal drinking age in Rhode Island. Andrews further testified that she used the alcohol at the previous gathering to mix up a batch of “Jungle Juice,” a combination of Kool-Aid and Everclear—and left the remaining grain alcohol in the barn. She did not purchase the bottle for fire use or “fire play.”

Thomas J. Paolino, a physician and psychiatrist, concentrating his practice on treating substance abuse issues with teenagers, testified that consumption of grain alcohol by teenagers can lead to “rapid intoxication” and young adults will typically engage in risky or dangerous behavior when severely impaired by alcohol. He further testified that grain alcohol is extremely flammable and it was foreseeable that teenagers who drink grain alcohol would often light it on fire.

The Plaintiff had two theories of liability for RC Liquors. First, Negligence: The Plaintiff alleged that RC Liquors breached its duty of care when it sold the grain alcohol to Lauren Andrews. Although she admitted that the injury was not due to the intoxication of a minor, but rather “horseplay,” Selwyn argued that RC Liquors was aware, or should have been aware that recipes and Web sites encouraged “fire play” with grain alcohol and that adolescents tend to ignite grain alcohol. Further, the Plaintiff argued that RC Liquors violated the Dram Shop Act, which supported her claim for negligence as a matter of public policy. Second, Strict Liability: The Plaintiff also alleged that selling grain alcohol to a minor was an ultrahazardous or abnormally dangerous activity, which warranted the application of strict liability.

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

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

### 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.

Selwyn v. Ward, 879 A.2d 882 (R.I. 2005).

Rhode Island Supreme Court

Opinion written by the Honorable Justices Frank J. Williams, C.J., Maureen McKenna Goldberg, Paul A. Suttell, and William P. Robinson, III, JJ.

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NAME

DATE

## Review the Case

After reading Selwyn v. Ward, answer the following:

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

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

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3. Is the Plaintiff asking for money damages?

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4. Who purchased the bottle of Everclear? Was he/she present at the party?

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5. Where was the grain alcohol purchased?

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6. When was the grain alcohol purchased?

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7. Who was the owner of the property where the party was hosted?

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8. Where on the property was the party located?

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9. How was Bridget Selwyn injured?

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## Review the Case (continued)

10. What could the Defendant, RC Liquors, have done to prevent the injury to the Plaintiff?

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11. What is an ultrahazardous activity?

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12. BONUS: In your opinion, do you think RC Liquors knew or at least should have known that by selling the grain alcohol to Lauren Andrews, a teenager, the bottle would fall into the hands of other teenagers who would then pour the alcohol onto an open flame?

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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. Plaintiff's negligence theory:**

**a.** Did RC Liquors sell the grain alcohol to a minor, namely, Lauren Andrews?

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**b.** Is it reasonably foreseeable to RC Liquors that by selling a bottle of Everclear to a minor that the minor may use it for "fire play"? Explain.

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**2. Plaintiff's strict liability theory:**

**a.** Did RC Liquors fail to warn the user of the dangers of the product it sold?

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**b.** Is the selling of grain alcohol an activity that cannot be made safe by the exercise of reasonable care?

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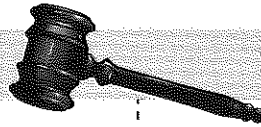
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## You Be the Judge

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**

**Bridget Selwyn**

**RC Liquors, Inc.**

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