

## Distinguishing Cases

*Englund v. MN CA Partners/MN Joint Ventures*, 555 N.W.2d 328 (Minn. Ct. App. 1996).

A patron purchased alcoholic beverages at an on-sale hotel bar, walked out with them in plastic cups, and consumed them off the premises before crashing her vehicle into the plaintiff's motorcycle. The court held that an on-sale liquor vendor's sale of alcohol consumed off-premises subjects the vendor to dram shop liability if the vendor fails to operate reasonably to ensure liquor is consumed only on the licensed premises. The specific legal rule applied in *Englund* pertains to the violation of an "on-sale" license by allowing off-premises consumption of alcohol, which constitutes an "illegal sale" under the Dram Shop Act. This specific rule does not apply to our fact pattern because the illegality of the sale at The Lucky Duck stems from serving an obviously intoxicated patron, not from a failure to prevent off-premises consumption. Factually, the patron in *Englund* physically carried her drinks out of the bar in open plastic cups and consumed them while walking and driving. In our fact pattern, Michael consumed his final beer entirely on the premises before heading to his car to drive home.

*Koebnen v. Dufuor*, 590 N.W.2d 107 (Minn. 1999).

A 17-year-old hosted a party at her father's private residence and charged a nominal fee of two (2) to four (4) dollars for a cup to drink unlimited beer. An uninvited guest paid the fee, became intoxicated, and severely injured the plaintiff in a physical assault. The court held that the legislature intended to insulate social hosts from liability under the Civil Damages Act, and a non-commercial host does not lose their "social host" immunity simply by imposing a nominal charge for beer. The law in this case does not apply to our fact pattern. The legal rule from *Koebnen* establishes immunity for non-commercial social hosts under the Dram Shop Act. The Lucky Duck is a commercial liquor vendor, meaning it is strictly subject to the Act and does not qualify for social host immunity. In *Koebnen*, the alcohol was provided by a teenager hosting a private party at a townhouse, and the injury resulted

from an intentional assault by an uninvited guest. In our fact pattern, the alcohol was served by trained bartenders at a commercial business (The Lucky Duck), and the injury was caused by a motor vehicle collision resulting from the patron's negligent driving.

*Kunza v. Pantze*, 527 N.W.2d 846 (Minn. Ct. App. 1995).

A plaintiff and her ex-husband were drinking at a bar; while driving afterward, the intoxicated ex-husband began to physically abuse the plaintiff. To escape the abuse, the plaintiff opened the passenger door and jumped or fell from the moving van, sustaining severe injuries. The court held that the driver's intoxication could be a proximate cause of the passenger's injuries under the Dram Shop Act, even if the passenger's own voluntary act of jumping out was the immediate cause of those injuries. The law regarding proximate causation under the Dram Shop Act does apply to our fact pattern. Because the law applies, the case facts serve as the distinguishing grounds. In *Kunza*, the plaintiff was a passenger in the intoxicated person's vehicle and intentionally jumped out to escape physical abuse directly stemming from his intoxication. In contrast, Mindy is a completely innocent third-party driver who was simply driving home from her hospital shift in her own vehicle when Michael ran a stop sign and crashed his car into hers.