

**Elements of Legal Argumentation I**  
***Mallory v. Harry's Bar\****

John Mallory was killed while he was driving home from a baseball game in August 1986. He was driving a silver gray 1985 Chrysler Imperial. Mallory was headed east on Longfield Drive through the intersection with Meadows Boulevard when a green Dodge pickup truck ran the red light on Meadows and hit his car on the driver's side. Mallory died instantly. Rory McAlpine was the driver of the pickup truck. An eyewitness estimated that McAlpine was driving 45 miles per hour at the time of impact.

McAlpine had just left Harry's Bar when the collision occurred. He had been watching the Detroit Tigers play the Boston Red Sox on the big screen television in the bar. According to other customers in the bar, McAlpine was already visibly inebriated when he entered Harry's that night. The bartender served him five boilermakers in the hour and a half he was in the bar.

The court decided that Harry's Bar was liable to Mallory's widow for his wrongful death. Harry's employee, the bartender, had a responsibility not to serve alcohol to a visibly intoxicated person. By serving five drinks over the course of one and a half hours to an intoxicated person, the bartender failed to meet his responsibility. While the bartender was not responsible for McAlpine's initial intoxication, he should not have served more alcohol to an intoxicated person. Harry's Bar is responsible under the doctrine of respondeat superior for the actions of its employee, the bartender. Consequently, the court determined that Ms. Mallory could collect damages from the bar.

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Articulate a rule from the case and use it as precedent to decide the following cases. Explain your reasoning. If you need to refine the rule to decide one or more of the cases, articulate the refined rule and your reasoning for modifying the rule.

1. Art Martinez was driving home from Joe's Brewpub & Bistro when he ran a stoplight and hit Emily Romero's car. Emily was seriously injured. Joe, who was tending bar that evening, remembered that Art was "high" after he consumed a couple of pints of English ale in an hour. Joe served him one more as Art was a good customer. Is Joe's Brewpub & Bistro liable to Emily Romero for the injuries caused by Art Martinez?

2. Monica Russo is a traveling salesperson. She was staying at the Sleepytime Inn on a recent trip. She went to the bar at the Inn for a gin and tonic before dinner. According to the waitress, Evelyn Saunders, Monica had two gin and tonics between 5:00 p.m. and 6:00 p.m. She then left to drive down the road for dinner. While changing lanes abruptly to turn into the restaurant parking lot, Monica collided

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\* Adapted from DIANA V. PRATT, LEGAL WRITING: A SYSTEMATIC APPROACH (2004)

with a station wagon filled with children who were on their way home from a birthday party. All the passengers in the car suffered minor injuries, but none were hurt seriously. Is Sleepytime Inn liable to the passengers of the bar for the injuries caused by Monica Russo?

3. Tiffany Kim is the pitcher and captain of the Peppery Pizza softball team. The team plays every Monday and Thursday during the summer. After the games, the team goes to a local beer garden and shares pitchers of beer. The beer garden sells burgers and beer from a counter; the patrons carry their pitchers to one of 24 tables set up in the garden. One Monday evening, Tiffany went up to the counter and bought the first round, which was two pitchers of beer for 11 players. Alice bought the next round, and JoAnne bought the final round. Tiffany drank heavily from each round while the rest of the team shared the remainder. After the second round, Tiffany showed signs of intoxication. Tiffany ran a stop sign on the way home from the beer garden and collided with a pickup truck. The passenger was hospitalized with a broken hip. Carlos, who was serving beer at the counter that night, remembers the team. According to Carlos, they came in twice a week during the summer and occasionally during the offseason. Tiffany was not intoxicated when she bought the first round, and neither Alice nor JoAnne showed any signs of intoxication. Is the beer garden liable for the injuries Tiffany caused the passenger of the pickup truck?

4. Melvin Tsosie gave a New Year's Eve party. There were about 50 guests at various points during the evening. He provided a quarter keg of beer and jugs of red wine as well as cheese, pretzels, chips, and dip. One of the guests, Marty Bowles, caused an accident while driving home. His car clipped the back left side of another vehicle, and the passenger sitting on that side was injured. Marty's blood alcohol level was 0.15%, which, according to a sheriff's deputy, indicated that he was intoxicated. Is Melvin liable for the injuries his guest caused the passenger?

5. Martha and Harold Mitchell invited five couples for cocktails and dinner. Harold did the cooking and Martha served as bartender. Each of the guests had at least two drinks before dinner. Harold had prepared five courses for dinner, and Martha served a different wine with each course, ending with dessert and champagne. Although everyone was inebriated by that time, Martha poured brandy for all to cap off the evening. One of the guests ran into a police car on the way home and injured an officer. Is Martha Mitchell liable for the injuries her guest caused the police officer?