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John David Mayberry

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# The Safe Roads Act: The Dram Shop Provisions

A study conducted by the National Highway Traffic Safety Administration revealed that in 1979 two million of the nation's traffic accidents were related to alcoholic beverage consumption.<sup>1</sup> Fifty-five percent of fatal accidents, twenty-five percent of nonfatal accidents, and eight percent of accidents causing only property damage involved alcoholic beverage consumption.<sup>2</sup> Teenage drivers who drank were involved in accidents more often than older drivers who drank.<sup>3</sup> If North Carolina statistics mirror these national results, more than half of the 1320 persons killed last year in North Carolina traffic accidents<sup>4</sup> died in alcohol-related crashes. The North Carolina General Assembly responded to the problem of underage drunken drivers by enacting dram shop provisions<sup>5</sup> as part of the 1983 Safe Roads Act.<sup>6</sup> The dram shop provisions<sup>7</sup> allow persons injured in vehicular accidents caused by the negligent driving of intoxicated, underage drinkers to sue the commercial vendors who furnished the underage persons with alcoholic beverages. Recent common-law decisions<sup>8</sup> have expanded the basis of liability of those who supply alcoholic beverages. This note reviews the history of dram shop liability, examines the dram shop provisions of the Safe Roads Act, and explores recent common-law developments.

At common law a person was not liable for harm caused by an intoxicated person to whom he furnished alcoholic beverages.<sup>9</sup> The rationale for denying recovery was that "the drinking of the liquor, not the remote furnishing of it, was the proximate cause of the injury."<sup>10</sup> In *Sutton v. Duke*<sup>11</sup> the North Carolina Supreme Court defined proximate cause: "In this jurisdiction, to warrant a finding that negligence . . . was a proximate cause of an injury, it must appear that the tort-feasor should have reasonably foreseen that injuri-

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1. NAT'L CENTER FOR STATISTICS AND ANALYSIS, U.S. DEP'T OF TRANSP., PUB. NO. 806-269, ALCOHOL INVOLVEMENT IN TRAFFIC ACCIDENTS: RECENT ESTIMATES FROM THE NATIONAL CENTER FOR STATISTICS AND ANALYSIS, 8 (1982). For purposes of these statistics, "alcohol-related" means an accident involving a driver or pedestrian with a blood alcohol concentration greater than or equal to .01.

2. *Id.* at 6-7.

3. A. WILLIAMS, TEENAGE DRIVERS AND ALCOHOL USE (Insurance Inst. for Highway Safety, Research Note # 101 1982).

4. N.C. DEP'T OF TRANSP., COLLISION REPORTS AND EVALUATION SECTION, TRAFFIC DATA BRANCH, NORTH CAROLINA TRAFFIC ACCIDENT FACTS 1 (1982).

5. N.C. GEN. STAT. § 18B-120 to -129 (1983).

6. Safe Roads Act of 1983, ch. 435, 1983 N.C. Adv. Legis. Serv. 52, 89-92.

7. *Id.* § 37.

8. *Chastain v. Litton Systems*, 694 F.2d 957 (4th Cir. 1982), cert. denied, 103 S.Ct. 2454 (1983); *Hutchens v. Hankins*, 63 N.C. App. 1, 303 S.E.2d 584, disc. rev. denied, 309 N.C. 191, 305 S.E.2d 734 (1983).

9. *Spencer v. Fisher*, 161 N.C. 116, 76 S.E. 731 (1913) (dictum); *Hutchens v. Hankins*, 63 N.C. App. 1, 303 S.E.2d 584, disc. rev. denied, 309 N.C. 191, 395 S.E.2d 734 (1983).

10. *Hutchens v. Hankins*, 63 N.C. App. 1, 5, 303 S.E.2d 584, 587, disc. rev. denied, 309 N.C. 191, 305 S.E.2d 734 (1983).

11. 277 N.C. 94, 176 S.E.2d 161 (1970).

ous consequences were likely to follow from his negligent conduct."<sup>12</sup> Because one can foresee that injurious consequences are likely to follow from serving alcohol to an intoxicated or underage person, the concept of proximate causation must embrace more than foreseeability. One commentator has observed that courts sometimes rely on proximate cause to hold a defendant not liable when the actual basis for the decision is public policy: "These cases probably reflect a judgment that under the circumstances a wrongdoer other than the defendant should be held responsible rather than a determination that the risk causing injury is outside the scope of defendant's conduct."<sup>13</sup> The policy determination that the real culprit is the individual consuming the liquor rather than the person furnishing it, is one explanation for the common-law rule excluding the alcohol provider from liability. Many courts, however, no longer adhere to the common-law rule.<sup>14</sup> These courts recognize a cause of action against suppliers of alcoholic beverages either on the basis of negligence per se<sup>15</sup>—violation of criminal statutes prohibiting the sale of such beverages to minors<sup>16</sup> and visibly intoxicated persons<sup>17</sup>—or ordinary negligence.<sup>18</sup>

Because no action existed at common law, a number of states enacted dram shop acts during the prohibition movement in the late nineteenth century.<sup>19</sup> Sixteen states presently have such laws.<sup>20</sup> North Carolina enacted a limited dram shop act in 1874;<sup>21</sup> the General Assembly repealed this statute in 1971.<sup>22</sup> Thus, no statutory basis for dram shop liability existed in North Caro-

12. *Id.* at 107, 176 S.E.2d at 168-69.

13. Byrd, *Proximate Cause in North Carolina Tort Law*, 51 N.C.L. REV. 961, 971 (1972).

14. For a discussion of the common-law rule, its underlying rationale, and departures from the rule, see *Hutchens v. Hankins*, 63 N.C. App. 1, 5-8, 303 S.E.2d 594, 587-89, *disc. rev. denied*, 309 N.C. 191, 305 S.E.2d 734 (1983).

15. Negligence per se results from the violation of a statute designed to protect the class of persons in which the plaintiff is included against the risk of harm that has occurred as a result of the violation. W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* § 36 (4th ed. 1971); *see also Hutchens v. Hankins*, 63 N.C. App. 1, 19, 303 S.E.2d 584, 595, *disc. rev. denied*, 309 N.C. 191, 305 S.E.2d 734 (1983).

16. *E.g.*, *Davis v. Shiappacossee*, 155 So. 2d 365 (Fla. 1963); *Elder v. Fisher*, 247 Ind. 598, 217 N.E.2d 847 (1966); *Pike v. George*, 434 S.W.2d 626 (Ky. 1968).

17. *E.g.*, *Waynick v. Chicago's Last Dep't Store*, 269 F.2d 322 (7th Cir. 1959), *cert. denied*, 363 U.S. 903 (1960); *Trail v. Christian*, 298 Minn. 101, 213 N.W.2d 618 (1973); *Hutchens v. Hankins*, 63 N.C. App. 1, 303 S.E.2d 584, *disc. rev. denied*, 309 N.C. 191, 305 S.E.2d 734 (1983).

18. *Chastain v. Litton Systems*, 694 F.2d 957 (4th Cir. 1982), *cert. denied*, 103 S. Ct. 2454 (1983); *Colligan v. Cousar*, 38 Ill. App. 2d 392, 187 N.E.2d 292 (1963); *Rappaport v. Nichols*, 31 N.J. 188, 156 A.2d 1 (1959); *Mason v. Roberts*, 33 Ohio St. 2d 29, 294 N.E.2d 884 (1973).

19. *Dram Shop Liability I—Statutory Liability*, FOR THE DEFENSE, Dec. 1973, at 129; Mosher, *Dram Shop Liability and the Prevention of Alcohol-Related Problems*, 40 J. OF STUD. ON ALCOHOL 773 (1979).

20. *See, e.g.*, ALA. CODE § 6-5-71 (1981); ALASKA STAT. § 04.21.020 (1980); CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1983); CONN. GEN. STAT. ANN. § 30-102 (1975); FLA. STAT. ANN. § 768.125 (Hart. Supp. 1982); ILL. ANN. STAT. ch. 43, § 135 (Smith-Hurd Supp. 1983); IOWA CODE ANN. § 123.92 (West Supp. 1983); ME. REV. STAT. ANN. § 340.95 (1954); MICH. STAT. ANN. § 18.993 (Callaghan 1980); MINN. STAT. ANN. § 340.95 (West Supp. 1983); N.Y. GEN. OBLIG. LAW § 11-101 (McKinney 1978); N.D. CENT. CODE § 5-01-06 (1975); OHIO REV. CODE ANN. § 4399.01 (Page 1982); PA. STAT. ANN. tit. 47, § 4-497 (Purdor 1964); R.I. GEN. LAWS § 3-11-1 (1976); VT. STAT. ANN. tit. 7, § 501 (1972).

21. Act of Jan. 29, 1874, ch. 68, § 2, 1873 N.C. Sess. Laws 94.

22. Act of July 16, 1971, ch. 872, § 3, 1971 N.C. Sess. Laws 1372.

lina when the Safe Roads Act<sup>23</sup> passed in 1983.

Although the portion of the Act dealing with dram shop liability<sup>24</sup> creates a cause of action traditionally unavailable at common law, it is limited in scope. Dram shop liability is ordinarily strict liability.<sup>25</sup> Section 18B-121(1) of the North Carolina General Statutes, however, provides that a defendant seller is liable only if he or his agent *negligently* furnishes alcohol to an underage person.<sup>26</sup> Presumably, a defendant would have a defense against liability under this statute if he reasonably relied on an identification card with a falsified birth date presented by an underage buyer.<sup>27</sup>

Another indication of the Act's restricted scope is that while many other dram shop statutes compensate any alcohol-related injury,<sup>28</sup> section 18B-121(3) provides compensation only in cases of injury arising out of a vehicular accident.<sup>29</sup> The injury must also be caused by the impaired driving of a person under the age required for the legal purchase of alcoholic beverages.<sup>30</sup> Sales to persons over the drinking age that result in injury do not give rise to a cause of action under the Act.

Even if these conditions are satisfied, section 18B-121(1) limits the class of defendants who may be held liable under the Act to licensed suppliers of alcoholic beverages.<sup>31</sup> Social hosts, therefore, are exempt from statutory liability. Section 18B-123 also exempts certain enumerated classes of licensees.<sup>32</sup>

Although the dram shop provisions are limited in nature, a number of provisions modify the common law. In cases of multiple defendants, anyone furnishing a beverage will be liable if the beverage "contributes to, in whole or in part, an underage driver's being subject to an impairing substance."<sup>33</sup> At common law, when the combined negligence of several actors brought about a

23. Safe Roads Act of 1983, ch. 435, 1983 N.C. Adv. Legis. Serv. 52.

24. *Id.* § 37.

25. *Konsler v. United States*, 288 F. Supp. 895 (N.D. Ill. 1968); W. PROSSER, *supra* note 15, § 81.

26. N.C. GEN. STAT. § 18B-121(1) (1983).

27. N.C. GEN. STAT. § 18B-122 (1983) provides:

Proof of good practices (including but not limited to, instruction of employees as to laws regarding the sale of alcoholic beverages, training of employees, enforcement techniques, admonishment to patrons concerning laws regarding the purchase or furnishing of alcoholic beverages, or detention of a person's identification documents in accordance with G.S. 18B-129 and inquiry about the age or degree of intoxication of the person), evidence that an underage person misrepresented his age, or that the sale or furnishing was made under duress is admissible as evidence that the permittee was not negligent.

28. For example, courts have allowed recovery under the Illinois Dram Shop Act, ILL. ANN. STAT. ch. 43, § 135 (Smith-Hurd Supp. 1983) when an intoxicated person fractured another person's skull in a bar, *Osborn v. Leuffgen*, 381 Ill. 295, 45 N.E.2d 622 (1942), an intoxicated person killed a bartender, *Meade v. Boggiano*, 127 Ill. App. 2d 344, 262 N.E.2d 310 (1970), and an intoxicated person shot his wife, *Edenburg v. Riggins*, 13 Ill. App. 3d 830, 301 N.E.2d 132 (1973).

29. N.C. GEN. STAT. § 18B-121(3) (1983).

30. *Id.* § 18B-121(1).

31. *Id.*

32. *Id.* § 18B-125. These include licensees who hold a: brown bagging permit, *id.* § 18B-1001(7), special occasion permit, *id.* § 18B-1001(b), limited special occasion permit, *id.* § 18B-1001(9), special one time permit, *id.* § 18B-1002, commercial permit, *id.* § 18B-1100, or any combination of the above.

33. *Id.* § 18B-121(2).

single, indivisible injury to a plaintiff, no one defendant was liable unless his contribution to plaintiff's harm was "substantial" or "material."<sup>34</sup> The General Assembly presumably included section 18B-121(2) in the dram shop provisions to reduce the inevitable litigation and confusion in cases involving multiple suppliers of beverages. By requiring only that negligently supplied alcoholic beverages contribute in some "part" to an underage person's impairment,<sup>35</sup> this section relieves a plaintiff of the burden of proving that the contribution of any one defendant rises to the elusive level of "substantiality."<sup>36</sup>

The dram shop provisions also permit recovery by an expansive class of plaintiffs for a wide array of injuries. Compensable injury is defined as including, though not limited to, "personal injury, property loss, loss of means of support, or death."<sup>37</sup> Under this provision, if an intoxicated, underage person negligently causes an automobile collision, dependents of injured third parties as well as the dependents of the intoxicated driver have a cause of action against the seller of the alcohol for loss of support. Section 18B-121(2) makes clear that a cause of action by dependents of the intoxicated driver is not barred by the underage driver's contributory negligence: "Nothing in G.S. 28A-18-2(a) or subdivision (1) of this section shall be interpreted to preclude recovery under this Article for loss of support or death on account of injury to or death of the underage person."<sup>38</sup> The intoxicated, underage driver, however, does not have any cause of action against the seller because an "aggrieved party" under section 18B-121(1) "does not include the underage

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34. RESTATEMENT (SECOND) OF TORTS §§ 431, 433 (1965); W. PROSSER, *supra* note 15, § 41. Substantiality is a slippery concept usually defined in terms of what it is not—*e.g.*, a match in a forest fire. W. PROSSER, *supra* note 15, § 41.

35. N.C. GEN. STAT. § 18B-121(2) (1983).

36. The extent that § 18B-121(2) modifies the common law is uncertain. Read literally, this section dispenses with causation in fact. In cases of multiple suppliers, the alcohol supplied by any one will always contribute in some "part" to an underage person's impairment. Should liability arise when an underage person drinks a small quantity of liquor at a second bar after consuming such a large quantity of liquor at the first bar that the accident would have occurred in spite of the contribution of the second bar?

The legislature created a cause of action under the Safe Roads Act based upon the negligent sale of alcoholic beverages. In any negligence action a plaintiff must prove not only that the defendant acted unreasonably but also that the defendant's conduct was the actual cause of injury. RESTATEMENT (SECOND) OF TORTS § 432 (1965). Because the accident would have occurred despite the contribution of the second bar, the alcoholic beverages served by the second bar owner are not the actual cause of injury. Thus, under the common law, the second bar owner would not be liable. Arguably, the same requirement of actual causation exists in the negligence action created by the Safe Roads Act. If so, the effect of § 18B-121(2) is to relieve a plaintiff of the burden of going forward with evidence that the contribution of any one defendant is substantial. A defendant, however, would not be precluded from presenting evidence that the accident would have occurred without its contribution.

37. N.C. GEN. STAT. § 18B-121(2) (1983). In contrast to this provision, which explicitly allows recovery for economic harm, at common law if a person suffers loss as result of injury to another, recovery is limited to compensation for harm to relational interests. W. PROSSER, *supra* note 15, § 125. In a consortium action, for example, a spouse can recover only for loss of society, comfort, and affection. *See* *Nicholson v. Hugh Chatham Mem. Hosp.*, 300 N.C. 295, 266 S.E.2d 818 (1980).

38. N.C. GEN. STAT. § 18B-121(2) (1983). At common law, contributory negligence of the underage driver barred recovery by his dependents or survivors for economic or relational losses. W. PROSSER, *supra* note 15, § 125.

person."<sup>39</sup>

Finally, section 18B-121(3) may also revise the common law. This section provides that "[a]n aggrieved party has a claim for relief for damages against a permittee or local Alcoholic Beverage Control Board if . . . the injury that resulted was proximately caused by the underage driver's negligent operation of a vehicle while impaired."<sup>40</sup> A literal reading suggests that a cause of action will be recognized if the underage driver's negligent operation of his vehicle rather than his impaired condition caused the plaintiff's injuries. In most cases involving drunken driving, a person's impaired condition causes his negligent driving and the cause of injury is the alcohol negligently supplied. Suppose, however, that an underage person was knowingly driving with bad brakes, and that brake failure, rather than his impaired condition, caused the accident. Under common law, the bad brakes would be the proximate cause of injury, and the party furnishing alcoholic beverages to the underage person would not be liable.<sup>41</sup>

Does section 18B-121(3) imply, however, that once an underage person becomes impaired any subsequent accident caused by his negligence, whether due to his impaired condition, will give rise to a cause of action against the party who supplied the underage person with alcohol? The General Assembly may have recognized that in a small number of cases an underage person's impaired condition plays no part in bringing about an accident he negligently caused. Thus, the General Assembly may have assumed that society's interest in deterring drunken driving and minimizing litigation outweighs the defendant's interests in these few cases. Perhaps the General Assembly consciously decided to foreclose debate over the cause of accidents involving intoxicated underage drivers. Read literally, section 18B-121(3) conclusively presumes that an accident involving an intoxicated, underage driver is caused by his drunken condition.

On the other hand, section 18B-121(3) can be read to stipulate that "the underage driver's negligent operation of a vehicle *while so impaired*" must be the proximate cause of the injury.<sup>42</sup> Arguably, the words "while so impaired" require that impairment contribute to the negligent driving. Thus construed, the statute requires that negligent driving due to impairment cause the injury. In the context of a negligence action this construction is preferable.

In addition to the statutory cause of action created by the dram shop provisions, a common-law cause of action is available under North Carolina law. Section 18B-128 provides that "[t]he creation of any claim for relief by the statute may not be interpreted to abrogate or abridge any claim for relief under the common law."<sup>43</sup> In two recent cases applying North Carolina law,

39. N.C. GEN. STAT. § 18B-121(1) (1983).

40. *Id.* § 18B-121(3) (1983).

41. See *Bell v. Page*, 271 N.C. 396, 156 S.E.2d 711 (1967); *Pinyan v. Settle*, 263 N.C. 578, 139 S.E.2d 863 (1965); *Reason v. Singer Sewing Mach. Co.*, 259 N.C. 264, 130 S.E.2d 397 (1963).

42. N.C. GEN. STAT. § 18B-121(3) (1983).

43. *Id.* § 18B-128.

*Hutchens v. Hankins*<sup>44</sup> and *Chastain v. Litton Systems*,<sup>45</sup> courts have found providers of alcohol liable for injuries caused by intoxicated drivers over the age required for the legal purchase of alcohol—a situation outside the scope of the dram shop provisions. In these cases, as under the statute, liability was predicated on negligence.

In *Hutchens* the North Carolina Court of Appeals upheld a cause of action against a tavern that served a large quantity of beer to an adult patron, including some allegedly after he had become intoxicated. Fifteen minutes after leaving the tavern, the patron's car collided with another vehicle, killing plaintiff's husband and injuring plaintiff and her son.<sup>46</sup> Plaintiff argued that the tavern was negligent per se on the basis of the tavern's violation of North Carolina General Statutes section 18A-34,<sup>47</sup> which prohibited the sale of alcoholic beverages by a licensee to a person known to be intoxicated.<sup>48</sup>

The *Hutchens* court agreed with plaintiff that statutes giving rise to a per se cause of action based on negligence do not create a new cause of action, but establish a minimum standard for what constitutes reasonable care.<sup>49</sup> For a criminal statute to set a minimum standard of care so that its violation is negligence per se, the court noted that the statute must be one to promote safety, the plaintiff must be a member of the protected class, and the defendant must be a person upon whom the statute imposes specific duties.<sup>50</sup> The court construed one of the purposes of section 18A-34 to be "the protection of the community at large from the possible injurious consequences of contact with an intoxicated person."<sup>51</sup> Because plaintiff was a member of the general public and defendant was a licensee to whom the alcohol control laws applied, the court adopted "the requirements of G.S. 18A-34 as the minimum standard of conduct for defendant-licensees."<sup>52</sup> Therefore, defendant's conduct in selling alcoholic beverages to a person known to be intoxicated was negligent per se. The court, however, did not decide whether social hosts and off-premises retailers were subject to liability, or whether an intoxicated person served alcoholic beverages could recover for his own injuries.<sup>53</sup>

44. 63 N.C. App. 1, 303 S.E.2d 584, *disc. rev. denied*, 309 N.C. 191, 305 S.E.2d 734 (1983).

45. 694 F.2d. 957 (4th Cir. 1982), *cert. denied*, 103 S. Ct. 2454 (1983).

46. *Id.* at 3, 303 S.E.2d at 586.

47. This statute was repealed in 1981 but a similar statute is codified at N.C. GEN. STAT. § 18B-305 (1983).

48. N.C. GEN. STAT. § 18A-34(a)(2) (repealed by ch. 412, § 1, 1981 N.C. Session Laws 438)

49. *Hutchens*, 63 N.C. App. at 13, 303 S.E.2d at 592.

50. *Id.* at 15, 303 S.E.2d at 593 (quoting *Marusa v. District of Columbia*, 484 F.2d 828, 834 (D.C. Cir. 1973)).

51. *Id.* at 16, 303 S.E.2d at 593.

52. *Id.*

53. *Id.* at 5, 303 S.E.2d at 587. The court did find that one purpose of the statute prohibiting sales to persons known to be intoxicated was the protection of these persons from the adverse consequences of intoxication. *Id.* at 16, 303 S.E.2d at 593. Nevertheless, *Hutchens* recognizes a cause of action based on negligent behavior. Thus, contributory negligence should bar recovery. See *Ramsey v. Anctil*, 106 N.H. 375, 211 A.2d 900 (1965) (statute prohibiting sale of intoxicants to intoxicated persons and giving rise to action for negligence does not eliminate defense of contributory negligence). *Contra Majors v. Brodhead Hotel*, 416 Pa. 265, 205 A.2d 873 (1965).

Because N.C. GEN. STAT. § 18B-305(a) (1983) is violated only by "knowingly" selling to

Prior to *Hutchens* the United States Court of Appeals for the Fourth Circuit had concluded in *Chastain v. Litton Systems*<sup>54</sup> that the North Carolina Supreme Court would impose civil liability on a licensee who violates a law prohibiting the sale of alcoholic beverages to an intoxicated person.<sup>55</sup> Defendant in that case, however, was not a licensee but an employer who sponsored a Christmas party during working hours for its employees, one of whom became intoxicated and caused an automobile accident after leaving work.<sup>56</sup> Because defendant was not a seller of alcohol, plaintiff could not argue negligence per se based on a violation of section 18A-34. Nevertheless, the court stated that the laws prohibiting licensees from selling alcoholic beverages to intoxicated persons "disclose state policy toward persons who dispense alcoholic beverages in capacities other than as social hosts."<sup>57</sup> On the strength of this policy the court upheld plaintiff's cause of action against the employer on ordinary negligence principles:

[W]e conclude that Litton was negligent if it failed to exercise ordinary care in furnishing . . . alcoholic beverages to Beck knowing that he had become intoxicated. This negligence would be a proximate cause of Beck's collision with Chastain if Litton could have reasonably foreseen that Beck, while intoxicated, would probably drive his motor vehicle on a public street and cause a collision.<sup>58</sup>

The *Chastain* rationale is broader than the principles of liability recognized in *Hutchens*. The court allowed plaintiffs to recover despite the absence of a statute explicitly proscribing defendant's conduct. The common-law actions recognized in *Hutchens* and *Chastain* supplement the enforcement mechanism established in the Safe Roads Act. They fill a void left by the Act's failure to recognize a cause of action arising out of sales to adult patrons. The extent to which these cases expand liability, however, depends on what policies the courts extract from the Safe Roads Act. If the policy behind the Safe Roads Act is merely the protection of the general motoring public from the dangers of drunken driving, the application of these cases will be limited.<sup>59</sup> Whether state policy includes the protection of other members of the public, or the intoxicated individuals themselves, must await further development. Although both cases involved automobile accidents, the same negligence principles also should apply to other injuries caused by intoxicated patrons. An innocent bystander injured in a barroom brawl, for example, should be able to maintain a cause of action under the rules laid down in these cases.<sup>60</sup> Further-

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intoxicated persons, excluding off-premises retailers who have little opportunity to observe the intoxicated state of customers is unnecessary to protect their interests.

54. 694 F.2d 957 (4th Cir. 1982), cert. denied, 103 S. Ct. 2454 (1983).

55. *Id.* at 961.

56. *Id.* at 959.

57. *Id.* at 961.

58. *Id.* at 962.

59. *Cf. Hutchens*, 63 N.C. App. at 16, 303 S.E.2d at 593 (purpose of laws prohibiting sale of alcoholic beverages to persons already intoxicated is protection of community from injurious consequences of contact with an intoxicated person).

60. In *Foster v. Winston-Salem Joint Venture*, 303 N.C. 636, 281 S.E.2d 36 (1981), the North Carolina Supreme Court recognized that injuries inflicted by intentional criminal acts of third



more, these cases provide broader procedural protection than the Safe Roads Act. Whereas a three year limitations period applies to common-law claims,<sup>61</sup> the statute of limitations applicable to the dram shop provisions is one year.<sup>62</sup>

In conclusion, the common-law rule that a person is not legally responsible for harm caused by an intoxicated person to whom he furnished alcoholic beverages has been substantially modified in North Carolina. The North Carolina General Assembly and courts applying North Carolina law have recognized a cause of action against suppliers of alcoholic beverages. The dram shop provisions are restricted in scope and apply only to sales to underage persons. In contrast, the judicially recognized cause of action permits recovery for harm caused by sales to persons over the drinking age. The negligence per se theory adopted by the North Carolina Court of Appeals in *Hutchens* is based on the violation of a statute prohibiting the sale of alcoholic beverages to intoxicated persons. In *Chastain* the United States Court of Appeals for the Fourth Circuit extracted from that statute a state policy that supports a cause of action founded in ordinary negligence. Although these decisions already provide a significant addition to the statutory cause of action, the ultimate scope of the judicially created action depends on the way in which the North Carolina courts construe state policy.

JOHN DAVID MAYBERRY

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persons may be compensable in a negligence action. *Foster* upheld a cause of action against a shopping mall by a shopper who was assaulted in the parking lot.

61. N.C. GEN. STAT. § 1-52(16) (1983) (the three year period does not accrue until injury becomes apparent or ought reasonably to have become apparent, if the action is brought within ten years).

62. *Id.* § 18B-126. This section adopts the statute of limitations of N.C. GEN. STAT. § 1-54 (1983), which provides for a one year limitations period.