

1 **13-1662. Liquor licensee liability to a third party.**

2 To establish the claim against _____ (*name of defendant licensee*) for
3 violation of the New Mexico liquor control laws, _____ (*name of plaintiff*) has the
4 burden of proving the following elements:

5 1. [_____ (*name of defendant*)] [or] [_____
6 (*name of defendant's agent(s) or employee(s)*)] sold, served, or provided alcoholic beverages to
7 _____ (*name of patron*) while [~~he~~ ~~she~~] _____ (*name of*
8 *patron*) was intoxicated; and

9 2. [_____ (*name of defendant*)] [or]
10 [_____ (*name of defendant's agent(s) or employee(s)*)] knew or should have
11 known from the circumstances that _____ (*name of patron*) was intoxicated.

12 In addition, _____ (*name of plaintiff*) has the burden of proving that
13 [_____ (*name of defendant*)'s] [or] [_____ (*name of defendant's*
14 *agent(s) or employee(s)*)'s] sale, service, or provision of alcoholic beverages to _____
15 (*name of patron*) was a cause of _____ (*name of plaintiff*)'s [injuries and]
16 damages.

17 USE NOTES

18 This is the basic instruction for a licensee's violation of NMSA 1978, Section 41-11-1
19 (1986), when the claim is brought by a third party allegedly injured by an intoxicated patron of the
20 licensee. The instruction should be given in conjunction with the appropriate definitions contained
21 in UJI 13-1660 NMRA.

1 [Adopted by Supreme Court Order No. 15-8300-005, effective for all cases pending or filed on or
2 after December 31, 2015; as amended by Supreme Court Order No. S-1-RCR-2025-00126,
3 effective for all cases pending or filed on or after December 31, 2025.]

4 **Committee commentary.** — The statute creating tort liability for the sale of alcoholic beverages,
5 NMSA 1978, Section 41-11-1 (1986), limits liability for violation of the Liquor Control Act to the
6 licensee. Section 41-11-1(D)(1) defines “licensee” as “a person licensed under the provisions of
7 the Liquor Control Act and the agents or servants of the licensee.” The [legislature’s] Legislature’s
8 definition of “licensee” evidences an intent to impose vicarious liability on an absent licensee for
9 the acts and omissions of the licensee’s agents and employees. The New Mexico Supreme Court
10 has confirmed that a licensee’s liability extends to the acts of agents and employees. *See Buffet v.*
11 *Vargas*, 1996-NMSC-012, 121 N.M. 507, 914 P.2d 1004.

12 The New Mexico Supreme Court held in *Estate of Gutierrez v. Meteor Monument, L.L.C.*, 2012-
13 NMSC-004, 274 P.3d 97, that actual knowledge of the patron’s intoxication is not required. The
14 issue is whether the licensee or its agents or employees knew or should have known from the
15 circumstances that the person was intoxicated. *Id.* ¶¶ 9-10. Section 41-11-1(C) specifically
16 provides that a licensee may not be charged with “knowledge of previous acts by which a person
17 becomes intoxicated at other locations unknown to the licensee.”

18 Comparative fault principles apply to an action brought pursuant to Section 41-11-1. *Baxter v.*
19 *Noce*, [~~1998-NMSC-024~~] 1988-NMSC-024, ¶ 12, 107 N.M. 48, 752 P.2d 240; *Reichart v. Atler*,
20 1994-NMSC-056, ¶ 11, 117 N.M. 623, 875 P.2d 379.

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