

1 **13-1663. Common law liquor liability to a patron.**

2 To establish the claim against _____ (*name of defendant seller or server*)
3 for wrongfully providing alcohol, _____ (*name of plaintiff*) has the burden of
4 proving the following elements:

5 1. [_____ (*name of defendant*)] [or] [_____ (*name*
6 *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;

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

12 3. [_____ (*name of defendant*)] [or] [_____ (*name*
13 *of defendant's agent(s) or employee(s)*)] acted with gross negligence and reckless disregard for the
14 safety of _____ (*name of plaintiff*).

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

19 USE NOTES

20 This is the basic instruction for a common law claim for wrongfully providing alcohol
21 when the claim is brought by the person who is provided with the alcohol. The instruction should
22 be given in conjunction with the appropriate definitions contained 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.** — In *Mendoza v. Tamaya Enterprises, Inc.*, [~~2011-NMSC-30~~]2011-
5 NMSC-030, ¶ 43, 150 N.M. 258, 258 P.3d 1050, the New Mexico Supreme Court held that the
6 enactment of NMSA 1978, Section 41-11-1 (1986) did not displace all common law dram shop
7 claims, and thus the common law recognizes dram shop claims against non-licensee tavernkeepers.
8 The Court also held that the standard of proof for common law claims is the same as the standard
9 for claims under Section 41-11-1; *i.e.*, a claim by an injured third party requires proof of simple
10 negligence, and a claim by an injured patron requires proof that the tavernkeeper acted with gross
11 negligence and reckless disregard for the safety of the patron. *Id.* ¶¶ 37-38. For more discussion of
12 common law liquor liability *see Lopez v. Maez*, 1982-NMSC-103, 98 N.M. 625, 651 P.2d 1269.

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