

1 **13-1664. Common law liquor liability to a third party.**

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 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 was a cause of
15 _____ (*name of plaintiff*)'s [injuries and] damages.

16 USE NOTES

17 This is the basic instruction for a common law claim for wrongfully providing alcohol,
18 when the claim is brought by a third party and not the person who was provided with the alcohol.
19 The instruction should be given in conjunction with the appropriate definitions contained in UJI
20 13-1660 NMRA.

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

1 **Committee commentary.** — In *Mendoza v. Tamaya Enterprises, Inc.*, [~~2011-NMSC-30~~]2011-
2 NMSC-030, ¶ 43, 150 N.M. 258, 258 P.3d 1050, the New Mexico Supreme Court held that the
3 enactment of NMSA 1978, Section 41-11-1 (1986) did not displace all common law dram shop
4 claims, and thus the common law recognizes dram shop claims against non-licensee tavernkeepers.
5 The Court also held that the standard of proof for common law claims is the same as the standard
6 for claims under Section 41-11-1; *i.e.*, a claim by an injured third party requires proof of simple
7 negligence, and a claim by an injured patron requires proof that the tavernkeeper acted with gross
8 negligence and reckless disregard for the safety of the patron. *Id.* ¶¶ 37-38. For more discussion of
9 common law liquor liability *see Lopez v. Maez*, 1982-NMSC-103, 98 N.M. 625, 651 P.2d 1269.
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11 ~~or after December 31, 2015~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]