

Table of Contents

<i>Preface</i>	v
<i>Biographical Notes</i>	vii
<i>Table of Cases</i>	xv
Chapter 1 Introduction	
1:10 Competing Public Policies and Attitudes Concerning Alcohol	1
1:20 The “Spectrum” of Liquor Liability.....	3
1:30 Legislation and Commercial Host Liability.....	6
1:40 Insurance	7
1:50 Limitations on the Scope of this Book	7
Chapter 2 Condition of Premises	
2:10 Introduction	9
2:20 Sources of the Duty of Care.....	10
2:20.10 <i>Common Law</i>	11
2:20.20 <i>Occupiers’ Liability Statutes</i>	14
2:30 Who is an “Occupier”	16
2:40 General Duties Related to the Condition of the Premises	17
2:50 Standard of Care	18
2:50.10 <i>Foreseeability of Risk</i>	18
2:50.20 <i>Sources of the Standard of Care</i>	24
2:60 Contributory Negligence.....	27
2:70 Post-Accident Modification.....	30

Liquor and Cannabis Liability Law in Canada

Chapter 3 Activities on the Premises

3:10 Introduction.....	33
3:20 Foreseeability of Injury	34
3:30 Statutory Duties Regarding Activity on Premises.....	38
3:40 Patron’s Negligence	41
3:50 Assaults by Patrons Against Other Patrons	43
3:60 Duty of Care when Invitees are not Served Alcohol	57
3:70 Contributory Negligence	59

Chapter 4 Off-Premises Liability

4:10 Introduction.....	63
4:20 Legislation.....	65
4:30 Common Law	69
4:30.10 <i>Duty to Intoxicated Patrons</i>	70
4:30.20 <i>Duty to Third Parties</i>	73
4:30.30 <i>The Limits of Foreseeability</i>	75
4:30.40 <i>Causation</i>	77
4:40 Foreseeability — Motor Vehicle Accidents	79
4:50 Causation — Motor Vehicle Accidents	83
4:60 Foreseeability and Causation in the Non-Motor Vehicle Context.....	88
4:70 Apportionment of Liability for Off-Premises Liability	91
4:80 Comparison of Commercial Liquor Liability Law in Canada and Australia.....	94

Chapter 5 Use of Excessive Force by Employees of Licensed Premises

5:10 Introduction.....	99
5:20 “Reasonable” Force	100
5:30 Self-defence	103
5:40 Provocation.....	106
5:50 Statutory Obligation to Eject Unruly Patrons	115

Table of Contents

5:60 Trespassers.....	116
5:70 Liability of Bars for Conduct of Employees	117
5:80 Liability for “Volunteers”	122
5:90 Liability of Directors and Officers.....	123

Chapter 6 Legislation Governing Employees of Licensed Premises — Security Service Legislation

6:10 Introduction	125
6:20 The British Columbia Statute	127
6:30 The Ontario Statute	130
6:40 The Alberta Statute.....	131
6:50 The Newfoundland Statute.....	133
6:60 The New Brunswick Statute	134
6:70 Nova Scotia	136
6:70 Other Jurisdictions	137
6:80 Practical Considerations Arising from Security Licensing Legislation	138
6:80.10 <i>Standard of Care Created by the Provincial Security Legislation</i>	138
6:80.20 <i>Insurance Considerations</i>	139
6:80.30 <i>Commercial Establishments Contracting Out Security Responsibility to Independent Contractors</i>	140
6:90 Liability Considerations Arising from the Security Licensing Legislation.....	140
6:90.10 <i>Liability of Liquor Establishments for Acts of Security Employees</i>	140
6:90.20 <i>Effects of Breach of or Compliance with Legislation</i>	143

Chapter 7 Other Relationships Giving Rise to Liquor Liability

7:10 Introduction	145
7:20 Control of Premises, Without Service	147
7:20.10 <i>Non-Service</i>	147

Liquor and Cannabis Liability Law in Canada

7:20.20	<i>Control Over Premises</i>	150
7:30	Off-Licence and Non-Commercial Providers	152
7:30.10	<i>Off-Licence Scenarios</i>	152
7:30.20	<i>Non-Commercial Providers</i>	153
7:40	Employers and Other “Paternalistic Relationships”	157
7:40.10	<i>Employers</i>	158
7:40.20	<i>Other Paternalistic Relationships</i>	168
7:50	Transportation and “Custody” of the Intoxicated	170
7:50.10	<i>Transportation as “Custody”</i>	170
7:50.20	<i>Taxi Drivers or Other Persons for Hire</i>	172
7:50.30	<i>Persons Taken in Custody by Police</i>	174
7:50.40	<i>Persons who Assume or are Instructed to Take Control of Someone Else</i>	175

Chapter 8 Social Host Liability

8:10	Introduction	179
8:20	What is a Social Host?	180
8:30	Historical Legal Development of the Concept of “Social Host”	180
8:40	Can There be a Duty of Care in the Social Host Context after <i>Childs</i> ?	190
8:50	Social Hosts as Occupiers — Alcohol-Related Injury on the Social Host’s Premises	195
8:60	Social Host vs. Commercial Host — Can There be Both?	201

Chapter 9 Key Liquor Legislation Provisions Across Canada

9:10	Introduction	205
9:20	The Regulators	207
9:30	Liquor Licences	209
9:40	Restrictions on Service	214
9:40.10	<i>Service to Minors</i>	215
9:40.20	<i>Sale to Intoxicated Persons</i>	217
9:40.30	<i>The Use of Force to Eject Patrons</i>	218

Table of Contents

9:50 Enforcement and Discipline.....219
9:60 Statutory Liability in Ontario.....220

Chapter 10 Criminal, Regulatory and Administrative Matters

10:10 Introduction.....223
10:20 Criminal Charges Arising from Over-service224
10:30 Charges Arising from Forcible Ejection.....230
10:40 Practical and Evidentiary Implications Arising from
Convictions.....232
10:50 Regulatory Proceedings238

Chapter 11 Cannabis

11:10 Introduction.....241
11:20 History242
11:30 The Current Regulation of Cannabis in Canada245
 11:30.10 Supply and Distribution246
 11:30.20 Sales246
 11:30.30 Restrictions on Service.....249
 11:30.40 Certification Programs.....252
 11:30.50 Commercial Liquor Hosts253
11:40 Effects and Interactions255
 11:40.10 Methods and Dosage256
 11:40.20 The Signs of Cannabis Intoxication257
 11:40.30 Cannabis-Related Risks.....258
 11:40.40 Cannabis and Alcohol.....261
11:50 Potential Liability Scenarios262
 11:50.10 Cannabis Retailers263
 11:50.20 Commercial Liquor Hosts264
 11:50.30 Social Hosts.....269
 11:50.40 “Paternalistic” and Other Relationships271
 11:50.50 Contributory Negligence273

Liquor and Cannabis Liability Law in Canada

Chapter 12 Insurance

I. Liability Insurance	275
12:10 Introduction	275
12:20 Functions of Insurance	276
12:30 Underwriting Liquor Liability	278
12:40 Who is an “Insured”?.....	280
12:40.10 The “Named Insured”	280
12:40.20 Directors, members, partners, and shareholders	281
12:40.30 “Employees” and “Volunteers”	281
12:40.40 Additional insureds	282
12:50 Commercial General Liability (CGL).....	283
12:60 Liquor and Hospitality Liability	288
12:70 Other Types of Insurance	290
12:70.10 Homeowners Liability	290
12:70.20 Directors and Officers Liability	290
12:70.30 Automobile Insurance	291
12:70.40 Costs Implications of Overlapping Insurance	293
12:80 Cannabis	294
12:80.10 The Underwriting Context	294
12:80.20 Exclusions and Restrictions on Coverage in “Standard” Policies	296
12:80.30 Cannabis Liability Coverage.....	298
12:90 Working with Insurers.....	300
12:100 Conclusion Introduction	302
<i>Index</i>	303