

Official Code of Georgia Annotated § 51-1-40.
Liability for acts of intoxicated persons

(a) The General Assembly finds and declares that the consumption of alcoholic beverages, rather than the sale or furnishing or serving of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person, except as otherwise provided in subsection (b) of this Code section.

(b) A person who sells, furnishes, or serves alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury, death, or damage caused by or resulting from the intoxication of such person, including injury or death to other persons; provided, however, a person who willfully, knowingly, and unlawfully sells, furnishes, or serves alcoholic beverages to a person who is not of lawful drinking age, knowing that such person will soon be driving a motor vehicle, or who knowingly sells, furnishes, or serves alcoholic beverages to a person who is in a state of noticeable intoxication, knowing that such person will soon be driving a motor vehicle, may become liable for injury or damage caused by or resulting from the intoxication of such minor or person when the sale, furnishing, or serving is the proximate cause of such injury or damage. Nothing contained in this Code section shall authorize the consumer of any alcoholic beverage to recover from the provider of such alcoholic beverage for injuries or damages suffered by the consumer.

(c) In determining whether the sale, furnishing, or serving of alcoholic beverages to a person not of legal drinking age is done willfully, knowingly, and unlawfully as provided in subsection (b) of this Code section, evidence that the person selling, furnishing, or serving alcoholic beverages had been furnished with and acted in reliance on identification as defined in subsection (d) of Code Section 3-3-23 showing that the person to whom the alcoholic beverages were sold, furnished, or served was 21 years of age or older shall constitute rebuttable proof that the alcoholic beverages were not sold, furnished, or served willfully, knowingly, and unlawfully.

(d) No person who owns, leases, or otherwise lawfully occupies a premises, except a premises licensed for the sale of alcoholic beverages, shall be liable to any person who consumes alcoholic beverages on the premises in the absence of and without the consent of the owner, lessee, or lawful occupant or to any other person, or to the estate or survivors of either, for any injury or death suffered on or off the premises, including damage to property, caused by the intoxication of the person

who consumed the alcoholic beverages.

HISTORY: Code 1981, §§ 51-1-40, enacted by Ga. L. 1988, p. 1692, §§ 1.

1. Read the whole statute (aka code section) carefully.
2. What is the purpose of this statute? What is its function?
3. Read subsection (b) carefully. Subsection (b) creates a right to sue, also known as a “cause of action.” Describe the person to whom the statute grants this right. For example, if a person consumes alcohol at a bar and then walks outside in an intoxicated state and gets into a fight with another person and injures the other person, would that other person be one who would have a “right of action” to sue the bar under the statute? Why or why not?
4. How does subsection (b) fit the definition of a “legal rule” on page 7 of the textbook? Identify the elements that make up the test, the result if the test is met, and the causal term (that is, is the result mandatory or discretionary?).
5. Consider the language of each of the elements of the cause of action in subsection (b). Which words seem to need further definition, or interpretation? Or to look at this another way: which words seem to create the possibility of a different answer to the issue raised by the element depending on the factual context (like the discussion of what constitutes “expressive activity” on pages 11-12 of the textbook)?
5. Does the rest of the statute contain any exceptions to the liability provided for in (b)?
6. Assume that this Friday, at around 8 p.m., I (Trimble) go to my favorite bar, the Tiki Torch Cantina, located in Athens, Georgia. I’ve had nothing alcoholic to drink on Friday before I go to the bar. I sit at the bar and order an alcoholic drink, and as I do so I place my car keys on the bar while I am talking to the bartender. The bartender takes my drink order after checking my ID to confirm I’m over 21. I proceed to order more drinks containing alcohol, which the bartender serves me. When I order my last two drinks, I slur my words, and before ordering the last one, I fall off the barstool. The bartender helps me up and delivers my shot. I grab my keys, stumble out the door, and get in my car.

At the intersection of the parking lot and the street, I hit the gas instead of the brakes, sail across the street and hit Sally, a pedestrian who is walking down the sidewalk on the other side of the street, badly injuring her. Fifteen minutes later, a police officer arrives and gives me a breathalyzer test. My blood alcohol content at the time of the accident is 0.15, and at that BAC a person of my size would have

diminished motor skills, muscle control, and decision-making ability. (Assume that the bar can be held legally responsible for the actions of its bartender, and that the bartender's knowledge would be imputed to the bar for purposes of the cause of action. Assume also that the term "unlawfully" in subsection (b) would be satisfied if the rest of the test is met. Finally, assume that a bar can be a "person" for purposes of the cause of action.)

Match the each of above facts to the element of the rule in subsection (b) that the fact tends to prove.

7. With respect to the hypothetical case in paragraph 6, is the statute:

- a. primary persuasive authority?
- b. secondary authority?
- c. primary mandatory authority?

Why?