

# **Legal Liability, Brotherhood & Liability Assessment**

**Presented by:**

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&  
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## **Seminar Outline:**

### **1. Definitions of Legal Liability**

- a. Liability**
  - i. Liable**
- b. Forms of Liability**
  - i. Criminal**
  - ii. Civil**
- c. Negligence**
  - i. Foreseeable**
  - ii. Duty of Care**
    - 1. Inviter-Invitee Relationship**
- d. Other Types of Liability**
  - i. Social Host Liability**
  - ii. Dram Shop Liability**
  - iii. Proprietor Liability**

### **2. Concepts of Brotherhood**

### **3. Assessment of Liability**

#### **Attachments**

**Massachusetts Laws**  
**MIT Alcohol Policy**  
**MIT IFC's Risk Management Policy**

# 1. Definitions:<sup>1</sup>

**Liability** – There is a lot of discussion on what liability is and what it is not. In general, liability refers to what you (or your organization or both) have to pay for “damage” related to another’s injury.

*Liabile - What does it mean to be liable?* To be liable is to be held responsible for some act or event that causes harm or damage to another. If you are found liable, you may have to pay the damages that are a result of the act or event. Damages usually are in dollar amounts and compensate others for:

- costs related to property damage or destruction,
- costs related to physical injury and the dollar amount associated with the physical and sometimes emotional “pain” associated with the injury and/or rehabilitative work, and
- any legal expenses incurred by the “injured” party.

## **Civil Liability & Criminal Liability**

There are two ways in which to discuss liability.

*Criminal Liability* - There may be a claim of liability when someone breaks the law – provide alcohol to a minor is illegal and it may result in the minor causing injury to themselves or another. So, not only can the individual or organization is charged criminally, they may also be held criminally liable for the damages associated with the act.

*Civil Liability* – There may also be a claim of liability when someone is “injured” and although no law is violated, the “injured” party feels that they should be compensated – I shovel my sidewalk and thereafter, you slip and fall on the sidewalk and sue me for not shoveling the sidewalk to a level that would insure your safety. No law was broken, but I could be held liable.

## **Negligence**

In order to determine if someone or an organization is liable, a determination of negligence has to occur. Negligence is a claim against you or your organization that *you did not act responsibly*. Or “The law of negligence imposes duty of care upon a person to take reasonable care to avoid causing foreseeable harm to another person or their property” (Legal Aid Queensland, 1997)<sup>2</sup>. How the courts decide if you have

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<sup>1</sup> Adapted from a series of workshops on legal liability that presenters have attended over the last seventeen years.

<sup>2</sup> For more information from this legal aid serve, go to <http://web.ask.com/redir?bpg=http%3a%2f%2fweb.ask.com%2fweb%3f%3dDuty%2b%2bCare%26o%3d4&q=Duty+of+Care&u=http%3a%2f%2ftm.wc.ask.com%2fr%3ft%3dan%26s%3da%26uid%3d21216006612160066%26sid%3d31216006612160066%26qid%3dCF0C0D0CC107C34D9D>

acted responsibly or not is set within the context of what the courts would expect a reasonable person to know or do or not do or know if they were in the same or similar situation.

Negligence is determined by a number of issues that include “foreseeable” and “duty of care”

*Foreseeable* – negligence can be determined if the incident was foreseeable. Is there any past history in regard to what happened in the incident that would have been an indication that a person could be “injured” in the future? If so, there is foreseeability and you must take corrective action before a second incident occurs. If you do not, you can be held liable for being negligent.

**Example:** So, in the winter, if individuals sled down a hill next to a campus building every year and then one year, three students slide into the building and injure themselves. If the campus does not enact a change to prevent future injuries and knowing that the students have been hurt (there is history to support this) then the campus could be held negligent for future injuries sustains sliding down the hill. In this example, the campus erected a snow barricade preventing future sledding down the hill as a reasonable effort to eradicate this kind of injury in the future.

In the context of a group, if there is history in your organization concerning an incident where someone could have or did get injured, you must take corrective action to insure that future incidents of this nature are minimized or eliminated.

Are there practices or history that raises a possibility of foreseeable risks for your organization?

*Duty of Care* – is the obligation a person or organization accepts in protecting the safety and well-being of others. Or “we say there is a duty of care to anyone with whom we come into sufficiently close relationship what it is reasonable we should take care to avoid injuring their person or property.”<sup>3</sup> Thus, if a safety hazard or risk is recognizable or foreseeable, one has to put in place measures that minimize or eliminate this risk.

One of the important elements of “Duty of Care” is the concept of *Inviter-Invitee Relationship* . When you invite someone to your home or event, you assume a higher standard of duty of care than per se if someone arrives uninvited.

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<sup>3</sup> [http://www.apeg.bc.ca/registration/practiceguide/law/tort/tort\\_dutyofcare1.htm](http://www.apeg.bc.ca/registration/practiceguide/law/tort/tort_dutyofcare1.htm)

**Example:** If I invite others to my home for an event, I take on a very clear “duty of care” obligation. I am charged with a higher degree of maintaining their safety and well-being, from the time they enter my property to the time they get home (and sometimes even beyond that). If you invite people to your house, whether by personal invite or open poster, you assume “duty of care”.

It is also important to note that negligence is not determined by what your intent is. Negligence has been determined even when others have failed to act, been ignorant of laws and policies, been careless or have failed to adequately consider the situation in the context of foreseeable or duty to care.

### **Other Types of Liability**<sup>4</sup>

Much of what has been introduced thus far refers to personal liability. But many of these concepts also apply to other types of liability, many that are very pertinent to fraternity life.

***Social Host Liability*** – Liability one assumes when one hosts an event where alcohol is served, provided or allowed to be consumed at the event. Social host liability applies to any home owner or group that hosts an event with alcohol. This form of liability states that the event host is responsible for any “injury” that occurs as a result of an intoxicated person harmed or that individual harming or “injuring” another party. This form of liability is applicable to fraternity events.

***Dram Shop Liability*** – obligation of licensed vendors to not serve minors or intoxicated individuals. If one does so, they can be held liable for the damages the individual caused others. In some cases, this form of liability can be applicable to a fraternity.

***Proprietor Liability*** – legal duty of property owners to maintain a safe facility and grounds for residents, users and visitors. Who has access to your facility areas and what form of risk is foreseeable? Is the property safe? This form of liability is applicable to a fraternity if they own the house and/or property.

All of these issues points to the importance of operating safe facilities and running safe events. There are no “no-risk” options for running an event with alcohol. There is an array of high, moderate and low risk practices used by fraternities that present issues of liability. It is important that fraternities are clear about being responsible, to exercise control and to take action where it is prudent to do so.

***Remember***

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<sup>4</sup> Adapted from Trainer materials, The Higher Education Center for Alcohol and Other Drug Prevention

*Responsibility is “the ability to respond!” and Liability is fundamentally about safety!*

*Note: neither presenters are lawyers and any information contained herein are simply meant to promote understanding and discussion on the relationship between liability and fraternity life. It is always necessary to consult a lawyer concerning your house’s specific policies governing liability.*

## **2. Brotherhood**

Thus far, we have discussed issues of liability in the context of legal implications and concepts. However, what may be important for fraternities to consider is what it means to be part of a brotherhood and how the concept of brotherhood translates into good risk management practices.

Brotherhood is a concept that is beyond the idea of a group of members forming a social club. Social club membership often ends when the individual leaves the Institute; membership in a brotherhood is for life.

Brotherhood prides itself on looking after the well-being of each other. There is a sincere degree of care for each other. Care is defined as physical care inasmuch that you would not want any harm come to your brother. Care also includes the brotherhood value of honesty and that we can confront each other openly.

Although this element of care can exist in social groups, it is a fundamental part of the equation of brotherhood. One of the arguments concerning risk management for fraternities is to look at the issue of care between brothers and extend it to the concern for the well-being of others that attend fraternity events. If we also valued “care for the well-being of others”, and implemented practices to support this value, much of what is discussed as *foreseeable* and *duty to care* would take a backstage to good fraternity practices regarding the safety of brothers and their guests.

So, if you construct everyday practices that look to insure that your brothers and your guests are kept out of harms’ way, you will create and implement sound risk management practices. These types of practices will also reduce your liability. You can then choose to run events that indicate that you care about the well-being of your guest (*invitee*) as much as you care about the well-being of your brother.

If you think about direct confrontation between brothers as a valued difference in being a brotherhood, then this same ideal can be translated into one of accountability for both your brothers and your guests. You can design practices that inform your guests what you expect of them when they enter your property or attend your event.

Thus, “accountability” and “care” are two important concepts of brotherhood that are also central to minimizing individual and group liability.



## **Assessment of Liability<sup>5</sup>**

- 1. What “foreseeable risks” exists for your house? Consider situations, traditions or events that are potentially dangerous.**
- 2. How has your house demonstrated “an ability to act reasonably” in order to decrease the foreseeable risks?**
- 3. What incidents has your house had in the past (recent and distant)?**
- 4. How were those incidents addressed? (What procedures did you put in place or actions did you take to prevent a similar incident in the future?)**
- 5. What success has your fraternity had in reducing foreseeable risk or dangerous situations?**

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<sup>5</sup> Adapted from a training manual, The Higher Education Center for Alcohol and Other Drug Programs

## ATTACHMENTS

### **Commonwealth of Massachusetts: Laws Related to Alcohol**

In the excerpts below, "M.G.L." refers to the Massachusetts General Laws, the written compendium of the laws of the Commonwealth of Massachusetts.

#### **1. Alcoholic Majority**

The legal drinking age in Massachusetts is 21 years of age.

#### **2. Purchasing Alcohol**

##### **A. For persons under 21 years of age:**

A person over 21 years of age may not buy alcohol for a person under 21 years of age, unless their relationship is that of parent and child or husband and wife, and even in those situations liquor must be bought at a package liquor store, not a restaurant or tavern. Violation of this section may result in a fine of \$2,000, imprisonment up to 6 months, or both. M.G.L.c.138, #34.

##### **B. By persons under 21 years of age:**

Alcohol may not be purchased or attempted to be purchased by a person under 21 years of age. A person may not lie about his/her age to purchase alcohol, present false identification, or make arrangements with someone older to buy alcohol for him / her. Violation of this section may result in a fine of \$300. M.G.L.c.138, #34A

##### **C. Liquor purchasing ID cards:**

Any person who transfers, alters, or defaces any such card, or who makes, uses, carries, sells, or distributes a false identification card, or furnishes false information in obtaining such a card, shall be guilty of a misdemeanor. Such persons are subject to immediate arrest. M.G.L. c. 138, #34B.

#### **3. Serving Alcohol**

##### **A. To persons under 21 years of age:**

Any person without a license to serve alcohol may not serve someone

**under 21 years of age, unless their relationship is that of parent and child or husband and wife. Violation of this section may result in a fine of \$2000, 6 months imprisonment, or both. M.G.L.c.138, #34.**

**B. To intoxicated persons:**

**Any person licensed to serve alcohol may not serve intoxicated persons. To do so may result in civil liability for injuries caused by the intoxicated person and/or suspension or revocation of the license. M.G.L.c.138, #69.**

**C. By unlicensed persons:**

**It is unlawful for unlicensed persons to serve alcohol to persons underage. The only exception to this law is that parents may serve alcohol to their own child and a spouse may serve alcohol to an underage spouse. Parents may not, however, buy alcohol for their child or spouse at a bar or restaurant. M.G.L.c.138,#34, #34A.**

**D. Liability of one day liquor license holders:**

**In any situation in which a sponsor receives a one-day liquor license, it must comply with all laws and regulations regarding the sale of alcohol, and it will be subject to any and all statutory and criminal penalties for violations of those laws and regulations. Liquor license holders must pay sales tax on all liquor sales at the event.**

**4. Alcohol and Driving**

**A. Transportation of Alcohol**

**It is unlawful for a person under 21 years of age knowingly to drive a car with alcohol in it unless accompanied by a parent. To do so may result in a fine of up to fifty dollars or suspension of the driver's license for three months, or both. May be arrested immediately without a warrant. M.G.L.c.138,#34C**

**B. Drinking and Driving**

**Persons may not drive while drinking from an open container of an alcoholic beverage. To do so may result in a fine for not more than \$500. M.G.L.c.90, #241.**

**C. Driving while under the Influence of Alcohol**

**1. Persons may not drive while under the influence of alcohol or any**

**intoxicating substance. Violators are subject to a fine of up to \$1,000 or imprisonment of up to two years, or both. If a police officer has reasonable grounds to believe a person is driving under the influence, a breathalyzer test may be given. The driver has the right to refuse to take the test, but this will result in automatic loss of license for a period of 120 days. M.G.L.c.90, #24(1).**

**2. Conviction for a first violation of this section results in a license for at least 45 days (180 days for offenders under the age of 21) and either a fine or imprisonment or probation and assignment to an alcohol education program. Conviction of a second violation means loss of license for at least one year, a fine and a minimum of 14 days in jail, or two years of probation and a minimum of 14 days confinement in a residential alcohol treatment program. May be arrested immediately without warrant. M.G.L.c.90, #24D.**

#### **D. Vehicular Homicide**

**Anyone who operates a motor vehicle under the influence of intoxicating substance and who operates that vehicle recklessly or negligently so as to endanger and who, by any such operation causes death of another, is guilty of homicide by motor vehicle and shall be punished by imprisonment at the state prison for not less than 2 -1/2 years, a fine of not more than \$5,000 and revocation of driver's license for 10 years. May be arrested immediately without a warrant. M.G.L.c.90, #24G.**

#### **E. Causing Serious Bodily Injury due to Drunk Driving**

**Anyone who operates a motor vehicle while under the influence of intoxicating substance and who operates the vehicle recklessly or negligently so as to endanger and who, by any such operation, causes serious bodily injury to another shall be punished by imprisonment at the state prison for not less than 2-1/2 years, a fine of not more than \$5,000 and revocation of driver's license for 2 years. May be arrested immediately without a warrant. M.G.L.c90, #24L.**

#### **5. Civil Liability Resulting from Alcohol Use**

**Generally, one accused and convicted of any of the above criminal violations who has caused personal injury or property damage as a result of his/her unlawful conduct, can have a civil suit brought against him/her, and a criminal conviction can be used in court as evidence against him/her.**

## **6. Social Host**

**Under Massachusetts law, a host of a party may be held liable for the injuries suffered by others if the host knew or should have known that a guest was drunk and nevertheless gave/permitted the guest to take an alcoholic drink and thereafter, because of the guest's intoxication, the guest negligently caused injury to others. If the guest who causes an injury is a minor, the host who served the alcohol or permitted alcohol to be served to the minor might be held liable to others even if the minor was already intoxicated when the minor was served alcohol.**

### **City, County, and Municipal**

#### **1. Liquor License**

**While the MIT campus has several licensed facilities, students and faculty groups may obtain a one-day liquor license in order to have a cash bar at their events. Licenses are issued by the Cambridge/Boston Liquor License Commission. The Cambridge location is at 831 Mass. Ave (across from the Central Square Post Office). In order to obtain a license, an Event Registration Form must be completed and filed with CAC, or Conferences Services, or RLSLP and the Campus Police. Forms may be obtained from event space scheduling offices or from RLSLP (W20-549).**

**One-day license holders must pay state sales tax on the gross sales of alcohol at their events. Please note that licensees must be at least 21 years of age and have a valid Massachusetts identification (driver's license). Out-of-state residents are not permitted to obtain these one day licenses unless they have a valid Massachusetts State Liquor Id Card.**

#### **2. Liquor License Holder Regulations**

**A. No licensee, employee, or agent of a licensee shall:**

**Offer or deliver any free drinks to any person or groups of persons;**

**deliver more than two drinks to one person at a time;  
sell, offer to sell, or deliver malt beverages or mixed drinks by pitcher  
except to  
two or more persons at one time;  
or encourage or permit, on the licensed premises, any game or contest  
which  
involves drinking or the awarding of drinks as prizes.**

**B. No licensee shall:**

**Advertise or promote in any way, whether within or without the licensee's premises, any of the practices prohibited above.**

## **MIT Policy**

### **9.0 RELATIONS AND RESPONSIBILITIES WITHIN THE MIT COMMUNITY**

#### **9.3 Substance Use**

##### **MIT Policies and Procedures**

**The following policies address the use of cigarettes, alcohol, and drugs at MIT.**

##### **9.3.1 Campus Smoking Policy**

**Smoking is prohibited in all spaces of all MIT academic and service buildings located in Cambridge. Residential buildings are excluded. This policy is intended to be self enforcing, and the cooperation of all members of the MIT community is expected.**

##### **9.3.2 Policy on the Use of Alcohol**

**MIT observes all laws and regulations governing the sale, purchase, and serving of alcoholic beverages by all members of its community and expects that these laws will be adhered to at all events associated with the Institute. This includes activities on the MIT campus, in MIT independent living groups, and at off-campus functions sponsored and supported by MIT or any of its affiliated groups.**

**The Institute does not intend through its guidelines or policies to restrict the responsible use of alcohol by members of the MIT community who are at or above the legal drinking age. Efforts to observe existing laws and regulations in an environment in which the majority of the undergraduate student body is not of drinking age will, however, almost certainly impose some constraints on those who are of age.**

**No alcoholic beverages may be served or consumed in any work area of the Institute at any time, except in Institute dining areas or at official Institute functions when expressly authorized by a member of the Academic Council.**

**Institute funds may not be used by student-run organizations to purchase alcohol. This includes both graduate and undergraduate groups and residence halls. As a result, "house taxes" and student activities funds may not be used to purchase alcohol; however, they may be used to hire bonded bartenders and/or party monitors.**

**MIT departments, including academic departments, laboratories and centers, and administrative units, may not use Institute funds to purchase alcohol for events. This prohibition may be waived with the approval of the relevant dean, vice president, or other member of the Academic Council, based on a determination that the requirements for serving alcohol at events are understood and will be observed.**

**All nonstudent-sponsored events where alcohol is served must be registered through the Conference Services Office, after being authorized by a member of the Academic Council. All student-sponsored events where alcohol is served must be registered through the Residential Life and Student Life Programs Office, after being authorized by the appropriate dean in the Office of the Dean of Students and Undergraduate Education.**

**Violations of this policy may be grounds for serious disciplinary action, up to and including discharge.**

### **9.3.3 Policy Regarding a Drug-Free Workplace**

**The unlawful use, manufacture, distribution, dispensation, sale, or possession of any illegal drug is prohibited in any work area of MIT at any time. Violations of this policy may be grounds for serious disciplinary action, up to and including discharge.**

**The use of illegal drugs in the workplace can obviously affect the work of the drug user, and it can also affect those who work or study with the drug user. Problems arising from drug abuse can be successfully handled in a majority of cases, provided they are recognized in the early stages and referral is made to the appropriate source. The Institute's Personal Assistance Program, within the Social Work Service of the Medical Department, provides specialized counseling and referral services to individuals who abuse drugs or alcohol. Individuals who are suffering from drug abuse are encouraged to seek assistance from this program. All referrals and treatment records are strictly confidential. In instances where it is necessary, sick leave will be granted for inpatient treatment or rehabilitation on the same basis as it is for other health concerns.**

**The federal government requires that each employee directly engaged in the performance of work under a federal grant or contract must a) be provided with a copy of a statement describing the employer's policy, and b) be notified that, as a condition of employment on that grant or contract, the employee will abide by the terms of the policy and will notify the employer if he or she is convicted of any criminal drug statute violation in the workplace no later than five days after such a conviction.**

**All individuals subject to the federal requirements should report to their employer any conviction, and the employer, in turn, is required to notify the awarding federal agencies of any convictions. At MIT, notification of the federal agencies will be made by the Office of Sponsored Programs. Department heads and other supervisors, in consultation with the Personnel Office, will have the responsibility for any disciplinary action, or for requiring offenders to participate satisfactorily in an approved drug treatment program, or both.**