

Legal Liability in Live Action Role-Playing: The Law is Dark and Full of Terrors

Abstract: This paper explores the legal liabilities and risks associated with running a live-action role-playing game (larp). Because few cases directly involving the larp community have been litigated, this paper searches for corollaries from other types of events run mainly in the United States that may prove enlightening for larp organizers. While the legal concerns faced by larp organizers may seem novel to them, many similar issues of legal liability have been litigated in courts for more than a century. The legal principles of social host liability vs. commercial host liability will be analyzed in the context of larps, demonstrating some of the likely disparate treatment for-profit larp organizers will experience versus their non-commercial counterparts. These principles will provide the foundation to analyze liability regarding the furnishing of alcohol in contexts when alcohol is being sold by the larp's organizers, when it is given away by organizers, and when organizers provide alcohol to an underage minor. This paper also explores other liability concerns for larp organizers, including their responsibility resulting from criminal actions by participants; criminal or negligent acts by their employees and volunteers; and personal injury of a participant at a larp event. Finally, the paper will briefly explore the liability of the landowner of sites where larps take place. Where clear bright-line answers to legal questions prove impossible—as they all too often do—this paper seeks to provide a general foundation of knowledge from which larp organizers can begin to analyze their legal liabilities. This article is intended for informational purposes only and not for the purpose of providing legal advice.

Russell Murdock
murdockrw@gmail.com

1. INTRODUCTION

Live action role-playing or larp is perhaps best considered as a fusion between a traditional tabletop role-playing game and improvisational theater. In the words of Lizzie Stark (2012), it is “similar to a theatrical play performed with no audience and no script” (Preface). In larp, the performers are in fact players in an immersive environment comprised of other players and a director or arbiter, often referred to as a game master. A game master “acts as the god of the game, guiding the story and making final determinations on the course of events, similar to a referee in a sports game” (Bowman 2010, 51). Yet despite the power of the game master, the outcomes of larps are most not often not set in stone, but rather dependent on the choices made by the players. While the dialogue and actions of each player remains in their own hands, the game master's role as referee manifests when characters come into conflict, as they often do in competitive larps. Only the game master and their dictated rules are capable of deciding who wins the Old West shootout or which wizard's magic spells proves more powerful (Stark 2012, Preface). Alternatively, collaborative larps tend to feature a co-creative form of adjudication among players, with the organizer role focused more on designing the setting and providing logistics.

The improvisational nature of larp, which is perhaps its greatest strength, can also lead to more conflict and ultimately risk than a traditional theatrical performance. For example, where a theatrical fight scene is meticulously scripted and practiced, a fight scene in a “boffer” larp, in which players swing foam swords at one another, is improvised and often done without knowing how the other player will attack. Indeed, the fact that both players are trying to win gives the scene both its excitement and an enhanced potential for danger.

The term “organizer” remains appropriate and, if anything, understates the roles many creators and administrators perform in bringing a larp to life. For some, larp is a hobby, but for others it is a business. International companies have formed and tapped into this market. Despite this, little has been written about the legal and business sides of larp. Presentations on larp and legality have focused primarily on issues such as dealing with the police (Wyrd Con 2014), franchising, and copyright (Living Games Conference 2016). These issues remain outside of the scope of this paper. Instead, the paper will explore the liabilities of larp organizers for instances when things do not go according to plan. What is legal liability? For the purposes of this paper, legal liability means an organizer's responsibility, in the event of a lawsuit, to pay monetary damages to a victim when

something goes wrong. The grim truth is that if the threat of legal liability remains too high, the very existence of larp as a medium could be threatened. And ignorance offers no shield to liability.

2. A NOTE ON LEGAL JURISDICTION

It is important to note that the majority of the legal precedent analyzed in this paper will be American caselaw. Yet this restriction is not quite as limiting as it might appear at first blush. Many of the legal principles that formed the foundation of American law are in fact grounded in English Common Law, which is among the most widespread legal system in the world with approximately thirty percent of the world's population living under some variant of it (Mattison Public Relations 2018). While the laws of these various countries are by no means identical, their shared ancestral roots indicate common ground exists.

Even within a given country, local laws and judicial interpretations may vary. Larp organizers should always consult their local laws in order to make an informed decision. By analyzing caselaw from several jurisdictions, this paper intends to provide a general framework for organizers rather than a comprehensive analysis of all potentially applicable laws or judicial decisions. Ultimately, this article is intended for informational purposes only and not for the purpose of providing legal advice.

3. SOCIAL VS. COMMERCIAL HOST LIABILITY

Many people both inside and outside of the larp community may at first glance consider it too peculiar an activity to glean much insight from other, more mundane, activities. But when one strips away the magic wands and foam swords and instead focuses on the relationship between the larp organizer and their participating guests, as would a judge, suddenly much of the mystery disappears. In its place is a centuries-old area of law that is inclined to change an organizer's duties and obligations depending on whether the organizer's relationship to their guests is social or commercial in nature. The context in which this principle both has the most history and is most likely to become relevant to larp organizers is conveniently the same: alcohol.

Traditionally, under the common law, a host who supplied alcohol to a guest could not be held liable for the injurious actions of the guest who had grown intoxicated from the alcohol furnished them by the supplier (Johnson v. KFC Nat'l Management, 161). The idea behind this traditional view was that the person who caused harm to another is themselves

the proximate or most immediate cause of the harm (162). Many modern courts and legislatures¹ have, however, modified this traditional perspective by enacting so-called dram shop acts or doctrines that impose a duty on some commercial suppliers of alcohol. The basis for thrusting some liability upon these commercial suppliers is that "the public regulates and licenses commercial vendors to sell and distribute alcohol for profit. The public has a right to demand that a commercial vendor act more prudently and with greater duty towards minors than is asked of a private person who hosts a party" (Busby v. Quail Creek Golf & Country Club, 1331).

Why is this relevant to larp organizers? Many organizers offer alcohol during their events. Some sell alcohol at their events, some give it away, and others allow participants to bring their own alcoholic beverages. If one of these so-called dram shop acts is found to apply to a larp organizer, the organizer could find themselves personally liable if one of their participants who becomes intoxicated at the larp crashes into and kills a pedestrian on their way home. While for many organizers larp is a pastime or hobby, for others it is a commercial venture and their livelihood. For such a person, understanding their legal risk should be paramount.

The good news is that while some courts have held open the possibility for applying liability to social or non-profit hosts, most have proven hesitant or unwilling to do so (McGee v. Alexander). But such hesitancy does not necessarily protect for-profit larp organizers. A deeper look into the caselaw or jurisprudence of courts that have considered lawsuits in similar situations offers some hints into how they would be viewed in different contexts.

The Supreme Court of Oklahoma considered a case that involved an intoxicated driver who killed two people after drinking at an event hosted by a clinic that was a for-profit company (McGee v. Alexander). The relatives of the victims sued both the clinic that hosted the event as well as the golf club where the event took place and which held the liquor license used to serve the alcohol. The court would not extend liability to the clinic for the driver's actions despite its for-profit nature, but the court would not rule out doing so for the golf club because it was a licensed commercial vendor of alcohol (McGee v. Alexander). The court drew a line of sorts in helping to analyze liability when it stated that "[i]n our view, if a distinction between a social host and a commercial provider is to be made, the basis for that distinction is

¹ Cf. Tex. Alcoholic Beverage Code Ann. §2.01 et seq.; N.Y. General Obligations Law §11-100.

whether the provider sells or intends to make a profit from the sale of alcohol" (804).

In another case, a firefighter's association held a fundraiser where it sold drink tickets, which in turn were used by an individual to obtain several beers. These drinks were given to him even after he became obviously intoxicated (*Carlson v. Thompson*). This intoxicated individual killed one person and injured another with his vehicle. When the surviving victim sued the firefighter's association, the court decided that the association could be held liable for the victim's harm because they furnished alcohol to an intoxicated individual. The court's reasoning was that the selling of alcohol enriched the association, which had obtained a liquor license for the event (*Carlson v. Thompson*).

These cases offer valuable insight for commercial larp organizers who may have alcohol at their events. First, the mere fact a larp is for-profit does not mean it will be liable for the actions of its intoxicated participants. Second, if a larp is selling alcohol for profit at its events, it runs the risk of potentially ruinous legal liability for the actions of an intoxicated guest.

What if a larp organizer does not sell the alcohol but instead gives it away? Courts appear less willing to extend liability to those who furnish alcohol without payment. In 1889, the Supreme Court of Illinois found that a neighbor that provided a victim a drink out of "courtesy and politeness" was not liable when the intoxicated victim's horse later threw him off, which led to the victim's death even where the proximate cause was his intoxication (*Cruse v. Aden*). A different appellate court held its dram shop act was intended to regulate the business of selling alcohol for profit rather than to regulate the social drinking of a group (*Miller v Owens-Illinois Glass Co.*). This court refused to extend liability to a glass company that, without charge, served alcoholic beverages at a picnic to an employee who later caused harm due to the subsequent intoxication resulting from said alcohol. Larp organizers should not grow too comfortable, however, as some jurisdictions have laws that impose liability "against any person who knowingly provides alcoholic beverages to an obviously intoxicated person for any purpose, including acts of hospitality" (*Born v. Mayers*). Where such a law exists, even casual non-commercial larp organizers may face liability when they provide alcohol to an intoxicated person. Additionally, organizers who attempt to avoid the appearance of profit by "giving away" alcohol at their events after simply pricing it into the cost of admission may find that judges and plaintiff attorneys can see through such an attempt

to remove the appearance of profiting from alcohol sales.

Courts tend to be particularly willing to extend liability to organizers who provide alcohol to underage participants. A social host, who simply gives away the alcohol to a noticeably intoxicated person under the legal drinking age, can be liable to a third person injured due to the negligence of the intoxicated driver (*Sutter v. Hutchings*). The Third Circuit held that in Pennsylvania, while adult guests and those third parties whom they have injured have no cause of action against their social host, minors who are served alcohol and who in turn injure others maintain a cause of action against those who provided the minor with alcohol (*Fassett v. Delta Kappa Epsilon*). In this same case, the court allowed the potential to expand liability to several "accomplices" such as the fraternity president and the roommates who had tended the bar and whose apartment had been used for the party. In some jurisdictions, the parents of an underage participant can seek damages against anyone who provides alcohol to their child without their consent (*Eldridge v Aronson*). This liability is not endless, however. Courts have held that, for example, homeowners were not deemed to have "furnished" alcohol to the 15-year-old girlfriend of their son where the homeowners were not home when the girlfriend came to their house and where they were unaware that she would be coming to their house (*McNamee v. A.J.W.*).

Based on a review of the caselaw, organizers of commercial larps that sell alcohol face significant legal liability. But even larp organizers that do not sell alcohol at their events face significant liability if alcohol is provided to an intoxicated person or to a minor during one of their events.

4. OTHER LIABILITY CONCERNS

While the liability concerns related to alcohol are among the most researched and litigated, other serious issues remain. Traditionally a person is only liable for their own actions. The paper already analyzed some limited exceptions in the context of one who furnishes alcohol to another. Another important exception for larp organizers to familiarize themselves with is vicarious liability, which is where a person is liable for the harm caused by another (*Dobbs 2000, § 333*). An employer, for example, is classically liable for the harm caused by their employee that is committed while the employee is acting "within the scope of [their] employment" (*American Law Institute 1965 Restatement of the law, Third, Agency 3d, § 1.01 cmt. c*). Organizers can even find themselves liable for the negligent actions of their volunteers,

particularly when the volunteer was acting on behalf of the organizer and when the organizer had the right to direct and control the conduct of the volunteer (cf. *Trinity Lutheran Church, Inc. v. Miller*, 1103). Perhaps even more alarming to some larp organizers is the fact that an employee's willful, malicious, and even criminal actions may be considered "within the scope of employment" when there is a relationship between the employee's position and the intentional, willful, or criminal conduct (cf. *Lisa M. v. Henry Mayo Newhall Memorial Hospital*, 961). For this liability to take effect, it is not necessary that the employer authorized or condoned the unlawful conduct of its employee. The standard instead hinges on whether the dispute or harmful act of the employee arises from the conduct of the employer's enterprise rather than a personal dispute or conflict of the employee.

In the context of a sexual assault, there is only liability for the employer when the assault is motivated by the employment activity rather than when the assault took place as a result of "only propinquity and lust" (*Lyon v. Carey*). It remains possible that similar vicarious liability for the criminal actions of volunteers could be imputed to organizers. Traditionally, organizers are not liable for criminal acts of third-party guests or participants, however, unless a special relationship exists between the perpetrator and the organizer or when the criminal act or harm was reasonably foreseeable by the organizer (American Law Institute 1965. *Restatement of the law, Second, Torts 2d*. § 315). It is the opinion of the author that such a "special relationship" could be found to exist between a volunteer and an organizer.

Organizers owe participants and guests a number of duties to protect them from harm on the premises of the larp. Larp organizers must exercise reasonable affirmative care to see that a site is safe for the participants or, alternatively, give the guests sufficient warning to allow the guests to decide for themselves whether or not to accept the invitation or to protect themselves from any danger present on the site (American Law Institute 1965. *Restatement of the law, Second, Torts 2d*. § 343). As a result, organizers are liable to participants who have been injured by any hidden dangerous conditions that the organizer should have known about (*Towles v. Cox*, 721).

Some may question whether a person in a larp, while portraying a character different from themselves, could be held legally liable for their actions. Role-playing, after all, involves "role-players temporarily identify[ing] with a character whose personality traits and choices often differ from their own" (Bowman 2010, 57). This offers little defense in most legal contexts. In a Texas case,

a man was convicted of sexual abuse of a child that took place, in part, during role-playing games in which they depicted vampires and werewolves (*McDonald v. State*). Despite the fact that the child victim portrayed an adult woman, the offender's in-character sexual touching of the child was still considered sexual abuse.

5. CONCLUSION

Larp organizers face serious legal risk any time they host an event. All larp organizers should consider a few key points before undertaking a new venture. First, organizers of all types should think long and hard before providing alcohol at their events, particularly if they intend to sell it. When it is not possible to avoid alcohol altogether, organizers must create strict guidelines that prohibit the furnishing of alcohol to underage participants or those who are intoxicated. Second, organizers must carefully vet their employees and volunteers before allowing them to help with the running of the larp. Organizers should not under any circumstances allow "broken stairs" (Brown 2017) or those suspected of past sexual predation to serve in any capacity at their events. Failure to vet volunteers and staff not only puts their guests at risk of harm, but ultimately puts organizers themselves at risk of legal liability for the negligent and even criminal acts of the perpetrator. The failure of larp organizers to properly analyze their legal liability and take affirmative steps to mitigate it threatens not only their own events, but the very existence of larp as a medium.

REFERENCES

- American Law Institute. 1965. *Restatement of the Law, Second, Torts 2d*. St. Paul, Minnesota: American Law Institute Publishers.
- American Law Institute. 1965. *Restatement of the Law, Third, Agency 3d*. St. Paul, Minnesota: American Law Institute Publishers.
- Born v. Mayers, 514 N.W.2d 687 (N.D. 1994).
- Bowman, Sarah Lynne. 2010. *The Functions of Role-Playing Games: How Participants Create Community, Solve Problems, and Explore Identity*. Jefferson, North Carolina: McFarland & Company, Inc.
- Brown, Maury. 2017. "19 Truths about Harassment, Missing Stairs, and Safety in Larp Communities." Nordiclarp.org. <https://nordiclarp.org/2017/03/14/19-truths-about-harassment-missing-stairs-and-safety-in->

- larp-communities/.
- Busby v. Quail Creek Golf & Country Club, 885 P.2d 1326 (Okla. 1994).
- Carlson v. Thompson, 615 N.W.2d 387 (Minn. Ct. App. 2000).
- Cruse v. Aden, 127 Ill. 231 (Ill. 1889).
- Dobbs, Dan. 2000. *The Law of Torts*, St. Paul, Minnesota: West Law Group.
- Eldridge v. Aronson, 472 SE2d 497 (Ga. App. 1996).
- Fassett v. Delta Kappa Epsilon, 807 F.2d 1150 (3d. Cir. 1986).
- Johnson v. KFC Nat'l Management Co., 788 P.2D 159, 161 (Hawaii 1990).
- Living Games Conference. "The Business of Larp: Larp and Legality Roundtable." Featuring Matt McElroy, Ashley Zdeb, Jason Webb, and Michael Pucci. YouTube. Last modified June 3, 2016. <https://www.youtube.com/watch?v=umAUyp3BDhc>.
- Lisa M. v. Henry Mayo Newhall Memorial Hospital, 907 P.2d 358 (Cal. 1995).
- Lyon v. Carey, 533 F.2d 649 (D.C. Cir. 1976).
- Mattison Public Relations on behalf of Sweet & Maxwell. "English Common Law is the Most Widespread Legal System in the World." Sweet & Maxwell. Accessed March 18, 2018. <https://www.sweetandmaxwell.co.uk/about-us/press-releases/061108.pdf>.
- McDonald v. State, 2005 Tex. App. Lexis 5766 (Tex. App. 2005).
- McGee v. Alexander, 37 P.3d 800 (Okla. 2001).
- McNamee v. A.J.W., 519 S.E.2d 298 (Ga. App. 1999).
- Miller v. Owens-Illinois Glass Co., 199 NE2d 300 (Ill App. 1964).
- Stark, Lizzie. 2012. *Leaving Mundania: Inside the Transformative World of Live Action Role-Playing Games*. Chicago, IL: Chicago Review Press.
- Sutter v. Hutchings, 254 Ga. 194 (Ga. 1985).
- Towles v. Cox, 351 S.E.2d 718 (Ga. App.1986).
- Trinity Lutheran Church, Inc. v. Miller, 451 N.E.2d 1099 (Ind. App. 1983).

Wyrd Con. "LARP & the Law by David Miner at Wyrd Con 5." YouTube. Last modified June 15, 2014. <https://www.youtube.com/watch?v=oMMiqaHG1-Y>.

Russell Murdock (J.D.) is an environmental attorney who currently works to enforce environmental laws in the southwestern United States. He assists special agents in developing criminal cases under all federal environmental statutes as well as under the criminal provisions of Title 18 of the United States Code. Prior to beginning his career as an attorney, Murdock obtained his Bachelor's degree from Brigham Young University in 2006. Murdock then attended the University of Texas School of Law, where he graduated with honors in 2010 and published a paper entitled "The State of CO2 Sequestration in the State of Texas."