JOHN A. O'DELL, ADMINISTRATOR (ESTATE OF PATRICK C. O'DELL) *v.* KENNETH KOZEE ET AL.
(SC 18851)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper, Js.*

*Argued April 18—officially released September 28, 2012***

Ron Murphy, for the appellant (plaintiff).

Elycia D. Solimene, for the appellees (defendants).

Refai M. Arefin filed a brief for the Connecticut Restaurant Association as amicus curiae.

William M. Bloss and *David M. Bernard* filed a brief for the Connecticut Trial Lawyers Association as amicus curiae.

David N. Rosen filed a brief for Mothers Against Drunk Driving Connecticut as amicus curiae.

Opinion

HARPER, J. The principal issue in this certified appeal is whether Connecticut's Dram Shop Act (act),[1] General Statutes § 30-102,[2] requires a plaintiff to prove that a patron was visibly or otherwise perceivably intoxicated[3] when sold alcoholic liquor in order to prevail on a claim against the purveyor of alcoholic liquor for injuries sustained as a result of the patron's intoxication. The plaintiff, John A. O'Dell, administrator of the estate of Patrick C. O'Dell (decedent), appeals from the judgment of the Appellate Court, reversing the judgment of the trial court in favor of the plaintiff on the ground that the trial court improperly denied the motion of the defendants, Kenneth Kozee, in his capacity as permittee for Deja Vu Restaurant, and others doing business as Deja Vu Restaurant,[4] for a directed verdict and to set aside the verdict. *O'Dell* v. *Kozee*, 128 Conn. App. 794, 805, 19 A.3d 672 (2011). We conclude that, although the Appellate Court properly determined that the plaintiff was not entitled to judgment in his favor without proving that the patron was visibly or otherwise perceivably intoxicated at the time he was sold liquor, the court improperly concluded that the plaintiff was not entitled to a new trial. Accordingly, we affirm in part and reverse in part the judgment of the Appellate Court.

The jury reasonably could have found the following facts. On September 5, 2006, at approximately 7 p.m., Joel Pracher drove himself and the decedent to the Deja Vu Restaurant (bar) in Plainville. Pracher and the decedent participated in a billiards league, and their team competed at the bar every other Tuesday night. On this particular night, Pracher consumed at least fifteen alcoholic beverages, including beer, tequila and brandy.[5] Pracher later admitted that his consumption of alcohol had caused him to become what he considered "drunk," meaning sufficiently affected by alcohol to be over the legal limit for driving. No one that night, however, observed Pracher exhibiting any obvious physical signs of intoxication. Specifically, no one observed Pracher having difficulty walking, slurring his speech or engaging in any loud or boisterous behavior. On at least one occasion, Pracher purchased an alcoholic beverage from a bartender while he was drunk.

At approximately 12:45 a.m., Pracher and the decedent left the bar together. Although Pracher was too drunk to remember most of what occurred thereafter, he did recall that he was drunk when he left the bar to drive the decedent home. Approximately two miles from the bar, while traveling in the westbound lane of West Main Street, Pracher drove his vehicle directly into the left backend of a box truck that was parked under a lit streetlight on the shoulder of the road, although there was room to safely navigate around the truck without entering the eastbound lane. The speed limit on West Main Street was thirty-five miles per hour;

Pracher's vehicle was traveling approximately sixty miles per hour at the time of the collision. The passenger side door and roof of Pracher's vehicle were torn off upon impact, and the decedent sustained serious physical injuries as he was ejected from the vehicle into the eastbound lane of West Main Street. A tow truck traveling east on West Main Street drove by almost immediately after the collision, and although the operator of the truck took evasive action to attempt to avoid contact, the truck ran over the decedent. He died as a result of his injuries. A toxicology report revealed that Pracher had a blood alcohol content of 0.187 shortly after the accident. It is unlawful to operate a vehicle with a blood alcohol content of 0.08 or greater.

The record reveals the following additional facts and procedural history. The plaintiff commenced an action against the defendants alleging that they were liable for the decedent's death pursuant to the act. Prior to trial, the plaintiff filed a motion in limine seeking to exclude argument or evidence that visible signs of intoxication are required to prevail. The court thereafter instructed the defendants in accordance with the plaintiff's motion. At trial, the plaintiff proffered testimony from Pracher and one of his companions at the bar on the evening of the accident, as well as testimony from a police officer regarding the circumstances of the accident. The plaintiff also proffered expert testimony from a medical toxicologist, Charles McKay. See footnote 5 of this opinion. McKay opined on the number of drinks that Pracher would have had to consume to reach the 0.187 blood alcohol content and that Pracher's blood alcohol content would have been in a range in excess of twice the legal limit for driving at various points in time before he left the bar. McKay further testified that a person with a blood alcohol content level of more than 0.10 would have "an abnormal mental or physical condition," "an impairment of judgment" and "an impairment of physical functions and energies" due to intoxicating liquor. On cross-examination, McKay acknowledged that, although persons with such blood alcohol levels generally show visible signs of intoxication, persons with a history of alcohol abuse, like Pracher, can develop behaviors to mask their intoxication up to a certain point. After the plaintiff's case-in-chief, the defendants moved for a directed verdict, which the court denied. The defendants then proffered testimony from Kozee and bar employees who had worked on the evening of the accident regarding the training that bar employees received to detect intoxication, the bar policy not to serve patrons who manifest signs of intoxication, and the absence of signs that Pracher was intoxicated.

The jury returned a verdict in favor of the plaintiff and awarded $4 million in damages. The defendants thereafter filed a motion to set aside the verdict, alleging that "there was no evidence presented that would sup-

port a finding that [Pracher] was served alcohol while intoxicated, because there was no evidence . . . that . . . he was more than merely under the influence or affected to some extent by alcohol, and/or that he exhibited any visible signs of intoxication . . . .'' The trial court denied the motion. The defendants also filed a motion to reduce the damages to $250,000 pursuant to the statutory cap under § 30-102, which the court granted.

The defendants appealed from the trial court's judgment to the Appellate Court, claiming that they were entitled to a verdict in their favor because no evidence had been presented from which the jury reasonably could have concluded that Pracher was ''intoxicated,'' pursuant to § 30-102 and this court's gloss of that term, at the time the bar sold him intoxicating liquor. *O'Dell* v. *Kozee*, supra, 128 Conn. App. 799. The Appellate Court held that, under Supreme Court and Appellate Court case law, the plaintiff in an action brought pursuant to the act must ''present evidence showing visible or perceivable intoxication.'' Id., 802, citing *Sanders* v. *Officers Club of Connecticut, Inc.*, 196 Conn. 341, 493 A.2d 184 (1985), and *Hayes* v. *Caspers, Ltd.*, 90 Conn. App. 781, 881 A.2d 428, cert. denied, 276 Conn. 915, 888 A.2d 84 (2005). Rejecting the plaintiff's claim that such a requirement was inconsistent with *Craig* v. *Driscoll*, 262 Conn. 312, 327–28, 813 A.2d 1003 (2003), in which this court had characterized the act as strict liability, the Appellate Court reasoned that ''an establishment would be strictly liable . . . if it sold intoxicating liquor to a patron who exhibited perceivable signs of intoxication, even if the permittee or bartender completely was unaware of and had no reason to know of such behavior.'' *O'Dell* v. *Kozee*, supra, 802. Because the Appellate Court's review of the record convinced it that the plaintiff had presented no evidence of visible or perceivable intoxication, it reversed the judgment and remanded the case to the trial court with direction to render judgment for the defendants. Id., 805. The Appellate Court subsequently rejected the plaintiff's claim, raised in a motion for reconsideration, that his failure to present evidence of perceivable signs of intoxication was due to his reliance on the trial court's ruling on his motion in limine and, therefore, that he was entitled to a new trial at which he could present such evidence. Id., 805 n.12.

We thereafter granted the plaintiff's petition for certification to appeal to address the following questions: (1) ''Did the Appellate Court properly determine that . . . § 30-102 requires . . . proof of [visible or otherwise perceivable] intoxication?''; and (2) ''If the answer to question one is affirmative, did the Appellate Court properly determine that the case should be [reversed and remanded with direction to render judgment for the defendants] when the trial court has issued a ruling prior to trial that the plaintiff did not have to prove

visible intoxication?" *O'Dell* v. *Kozee*, 302 Conn. 928, 28 A.3d 343 (2011). On the first question, we conclude that § 30-102 does require proof of visible or otherwise perceivable intoxication. On the second question, we conclude that the Appellate Court improperly determined that the plaintiff is not entitled to a new trial.

I

We first turn to the plaintiff's challenge to the Appellate Court's construction of § 30-102. The plaintiff contends that the court's construction of the act, requiring visible or perceivable signs of intoxication, is contrary to the plain language and strict liability nature of the act, that nothing in this court's case law compels that construction, and that the legislature would not have intended to require visible intoxication because it is an unsafe standard. Additionally, the plaintiff urges this court to hold that evidence of a blood alcohol level of 0.08 at the time of the sale of liquor to a patron shall be per se evidence of intoxication for purposes of § 30-102, consistent with the standard for the offense of operating a motor vehicle while under the influence. See General Statutes § 14-227a. In response, the defendants contend that, despite the absence of language expressly imposing such a requirement, appellate case law long has required proof of visible intoxication and that a contrary construction would impose an unfair and impractical burden on purveyors that the legislature could not have intended. Additionally, the defendants claim that the act imposes strict liability only to the extent that it relieves a plaintiff from having to prove a causal connection between the specific sale and the subsequent injuries, not with respect to proof of intoxication at the time of the sale. Finally, the defendants contend that deeming a blood alcohol content of 0.08 at the time of sale to be per se evidence of intoxication under the act would be inconsistent with the distinction that the legislature and the courts historically have drawn between being "under the influence" and being "intoxicated."

We conclude that, although the parties focus their arguments principally on the so-called plain meaning of "intoxicated" and two of this court's cases, *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 341, and *Craig* v. *Driscoll*, supra, 262 Conn. 312, this framework begins from an incorrect premise and ignores other considerations that bear on the question of whether § 30-102 requires proof of perceivable intoxication at the time of sale. In light of the totality of those considerations, we agree with the defendants.

The meaning of "intoxicated" under § 30-102 presents a question of statutory interpretation under which our review is plenary. See *Kinsey* v. *Pacific Employers Ins. Co.*, 277 Conn. 398, 404, 891 A.2d 959 (2006). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the

legislature. . . . In seeking to determine [the] meaning [of the statute], General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes." (Internal quotation marks omitted.) *Esposito* v. *Simkins Industries, Inc.*, 286 Conn. 319, 327, 943 A.2d 456 (2008). If that endeavor provides no clear and unambiguous result, it is appropriate to look at extratextual sources. General Statutes § 1-2z; see also *Eder Bros., Inc.* v. *Wine Merchants of Connecticut, Inc.*, 275 Conn. 363, 372, 880 A.2d 138 (2005) ("our well established process of statutory interpretation [instructs us to look] . . . to the legislative history and circumstances surrounding [the statute's] enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter" [internal quotation marks omitted]).

To answer the question of whether § 30-102 requires a plaintiff to prove that the patron was visibly or otherwise perceivably intoxicated when he or she was sold alcoholic liquor, we turn first to the text of the statute. Section 30-102 provides in relevant part: "If any person, by such person or such person's agent, sells any alcoholic liquor to an *intoxicated person*, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another, such seller shall pay just damages to the person injured, up to the amount of two hundred fifty thousand dollars . . . ." (Emphasis added.) On its face, § 30-102 creates liability upon the sale of alcoholic liquor to an intoxicated person, not to a visibly or otherwise perceivably intoxicated person. Cf. General Statutes § 17a-683 (a) ("[a]ny police officer finding a person who *appears to be intoxicated* in a public place and in need of help may, with such person's consent, assist such person to his home, a treatment facility, or a hospital or other facility able to accept such person" [emphasis added]). There also are no other terms in the statute that imply that the purchaser must be perceivably intoxicated for the purveyor's liability to arise. Cf. General Statutes § 17a-690 (a) ("[n]o town, city or borough or other political subdivision may adopt or enforce a local ordinance that includes drinking intoxicating liquor, being a common drunkard or *being found in an intoxicated condition* as one of the elements of an offense giving rise to a criminal or civil penalty or sanction" [emphasis added]). Moreover, the statute does not expressly require proof that the purveyor knew or should have known that the patron was intoxicated at the time of sale. Cf. General Statutes § 30-86 (b) (1) (providing that "[a]ny permittee . . . who sells or delivers alcoholic liquor to . . . any habitual drunkard, *knowing the person to be such an habitual drunkard*, shall be subject to the penalties of section 30-113" [emphasis added]). Accordingly, there is nothing in the text of § 30-102 specifically to qualify the proof required to establish sale to an "intoxi-

cated" person.

A question remains, however, whether the term "intoxicated" itself could mean a visible or otherwise perceivable state of inebriation. As this court previously has noted, "intoxication [has been] defined in a number of ways in a number of contexts." *Wentland* v. *American Equity Ins. Co.*, 267 Conn. 592, 610, 840 A.2d 1158 (2004). Although the legislature has defined "intoxicated person" and "intoxication" for purposes of our civil commitment scheme and our Penal Code respectively,[6] it has not provided a definition for purposes of the Liquor Control Act, General Statutes §§ 30-1 through 30-116, of which § 30-102 is a part.

It has long been established that, when a term is undefined, we generally look to its "commonly approved usage . . . ." General Statutes (1891 Rev.) § 1, currently codified as General Statutes § 1-1 (a). At the time our act was enacted in its current form in 1933,[7] however, many courts had acknowledged the inherent ambiguity in the term intoxication and the wide range of effects to which the term could apply. See, e.g., *United States* v. *Standard Brewery*, 251 U.S. 210, 211–12, 40 S. Ct. 139, 64 L. Ed. 229 (1920) ("[t]he word 'intoxicating' can scarcely be said to have a very definite meaning"); *Order of United Commercial Travelers* v. *Greer*, 43 F.2d 499, 502 (10th Cir. 1930) ("[i]ntoxication is difficult to define"); *Tracy* v. *Brecht*, 3 Cal. App. 2d 105, 111–12, 39 P.2d 498 (1934) ("There are degrees of intoxication varying all the way from slight stimulation to complete coma. It is only at some point along the line between the two extremes that the loss of control of the mental faculties occurs." [Internal quotation marks omitted.]); *People* v. *Schneider*, 362 Ill. 478, 485, 200 N.E. 321 (1936) ("[t]he courts of different [s]tates have applied varying definitions to the term [intoxication]"); *State* v. *Graham*, 176 Minn. 164, 169, 222 N.W. 909 (1929) ("Several courts have discussed the meaning of the words 'intoxication,' 'intoxicated' and 'drunk,' and have pointed out that there may be several degrees of intoxication. Different definitions have been given under differing statutes and as applied to differing contracts or situations."); *People* v. *Weaver*, 188 App. Div. 395, 399, 177 N.Y.S. 71 (1919) ("The word 'intoxication' is not defined by the statute. For its meaning we must, therefore, resort to its proper use in the ordinary speech of people. Lexicographers are not in entire agreement in their definition of the word. Perhaps the courts are not in harmony in respect thereto."); *Mutual Life Ins. Co.* v. *Johnson*, 64 Okla. 222, 224, 166 P. 1074 (1917) ("[t]he condition presents various degrees of intensity, ranging from a simple exhilaration to a state of utter unconsciousness and insensibility" [internal quotation marks omitted]); *Paris & Great Northern Railroad Co.* v. *Robinson*, 104 Tex. 482, 487, 140 S.W. 434 (1911) (noting that intoxicated is synonymous with drunk, which is "ordinarily understood [as]

a term susceptible of varying degrees").

Given this ambiguity and range, courts often have determined that the meaning of intoxication must be determined in relation to the context in which the term is used. See *Order of United Commercial Travelers* v. *Greer*, supra, 43 F.2d 502; *State* v. *Graham*, supra, 176 Minn. 169; *People* v. *Weaver*, supra, 188 App. Div. 400. Thus, the term may have one meaning when the question is whether a witness' condition has rendered him or her incompetent to testify,[8] another when raised as a defense to an action for specific performance on a contract,[9] another when considering whether a common carrier has a duty of care,[10] and yet another when considering an exclusion to insurance coverage.[11]

Looking to the particular context at issue in the present case—dram shop liability—we note that other jurisdictions expressly have indicated that: (1) the purchaser must be perceivably intoxicated (varyingly qualified by the terms "obviously," "clearly, "visibly," "noticeably," or "apparently"); or (2) the purveyor of alcoholic liquor must have had actual or constructive knowledge of the purchaser's intoxicated state; or (3) both.[12] One could argue, therefore, that intoxication alone cannot refer to a perceivable state; otherwise such qualifying language would be rendered superfluous in contravention to universal principles of statutory construction. See 2 N. Singer & J. Singer, Statutes and Statutory Construction (7th Ed. 2007) § 46:6. On the other hand, intoxication could mean a perceivable state if the descriptive term specified or clarified the nature or degree of proof. See *Mjos* v. *Howard Lake*, 287 Minn. 427, 430, 178 N.W.2d 862 (1970) (comparing different versions of state's dram shop act requiring sale to "obviously intoxicated" person and sale to "intoxicated" person, and concluding that both mean "intoxication which is disclosed by the behavior of the perspective purchaser" but are distinguishable in degree). Furthermore, the clear consensus among other jurisdictions—that evidence of perceivable intoxication is required—would seem to support the conclusion that imposing liability only when such proof is offered is wholly consistent with the purposes underlying dram shop legislation.

Of course, it is our legislature's intention that is at issue in the present case, not that of other jurisdictions. In this regard, we must be mindful of the history underlying our own act to provide the proper context to resolve the question before us. Our first dram shop legislation was enacted in 1872, and then reenacted following Prohibition in its essential current form in 1933. See *Nolan* v. *Morelli*, 154 Conn. 432, 437–38, 445, 226 A.2d 383 (1967). The act displaced a common-law rule that no recovery could be had against a purveyor of intoxicating liquor for injuries arising from consumption of such liquor, a rule predicated on the theory that the purchaser's consumption, not the purveyor's

furnishing of the liquor, was the proximate cause of the injury. Id, 437. The 1933 version of the act relieved a plaintiff from having to prove a causal connection between the sale and the subsequent injuries, thereby "unmistakably manifested its intention to simplify, and in some respects to strengthen and enlarge, the statutory cause of action." Id., 438. If we were to construe our act with no requirement of proving visible intoxication, however, we would have to conclude that the legislature intended to do much more than simply displace the common-law rule. We would have to conclude that the legislature intended a radical change to the law, imposing liability on a purveyor not only under circumstances tantamount to negligence but also under those tantamount to absolute liability. Moreover, because the statute for many years imposed no cap on damages; see Public Acts 1959, No. 631, § 1 (adding limit to "just damages"); under the plaintiff's broad construction, a purveyor would have been liable without regard to causation and culpability and without limits. In the absence of clear evidence that the legislature intended such an extreme departure from the common law, such a construction seems dubious at the very least.

A survey of our case law predating *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 341, on which the defendants rely, while not conclusive, indicates that this court had considered such questions and had construed intoxication, for purposes of the Liquor Control Act, as a perceivable state of inebriation. This court first interpreted the term "intoxicated person" as used in General Statutes § 30-86.[13] *State* v. *Katz*, 122 Conn. 439, 189 A. 606 (1937). Section 30-86 provides the criminal counterpart to § 30-102, prescribing a fine and/or term of imprisonment up to one year for a permittee's sale of intoxicating liquor to three classes of persons—minors, intoxicated persons and habitual drunkards. This court previously has recognized the close relationship between these two statutes. "The portion of § 30-86 prohibiting the sale of intoxicating liquor to an intoxicated person has long been the law of this state. It appeared as a portion of § 6 of chapter 99 of the Public Acts of 1872, which . . . was the very [P]ublic [A]ct in which, in § 8, the original dram shop act appeared." *Nolan* v. *Morelli*, supra, 154 Conn. 445. "The obvious purpose of the [dram shop] legislation is to aid the enforcement of [General Statutes (1949 Rev.)] § 4293 [the predecessor to § 30-86] by imposing a penalty, in the form of a civil liability, in addition to the penalty prescribed in that section, and to protect the public." *Pierce* v. *Albanese*, 144 Conn. 241, 249–50, 129 A.2d 606, appeal dismissed, 355 U.S. 15, 78 S. Ct. 36, 2 L. Ed. 2d 21 (1957).

In *State* v. *Katz*, supra, 122 Conn. 439, this court addressed various challenges to a conviction under § 30-86 on the basis of the sale of liquor to an intoxicated person. In rejecting a claim that it was "incumbent upon

the [s]tate to prove knowledge on [the defendant's] part that [the purchaser] was intoxicated when he made the sale to him"; id., 441; the court explained: "[K]nowledge is not an element of the offense as regards sales to intoxicated persons or minors. . . . The [l]egislature has seen fit to *place the burden of determining whether or not the purchaser of liquor is intoxicated upon the seller* and that it had the power to do."[14] (Citations omitted; emphasis added.) Id., 441–42. In rejecting a claim that the statute was unconstitutionally vague, the court further reasoned: "It is not necessary in this case, even if it were practicable, to attempt to formulate a definition of intoxication. There was evidence of one of the most common indications of intoxication, staggering in walking or running. Certainly when a person displays outward manifestations of such a condition by an abnormality of behavior generally accepted as a result of the use of liquor he is 'an intoxicated person' within the meaning of this statute. *The condition of intoxication and its common accompaniments are so much a matter of general knowledge that practicable and sensible effect may be given to the words 'intoxicated person' as used in the statute . . . and the law cannot be held too indefinite to be enforceable.*" (Citation omitted; emphasis added.) Id., 442–43.

Reasoning along similar lines in a case subsequently construing § 30-102, the United States Court of Appeals for the Second Circuit concluded: "[T]he defendant urges that the [act] is unconstitutionally vague because it does not establish standards for determining what constitutes 'an intoxicated person' or the meaning of the phrase 'in consequence of such intoxication.' *As a purveyor of liquor*, [*the*] *defendant's claim that he cannot tell with reasonable certainty the state of mind and body commonly termed 'intoxication' has a hollow ring*. This precise point was settled in favor of the statute's constitutionality in *Pierce* v. *Albanese*, supra, [144 Conn. 241] . . . ."[15] (Emphasis added.) *Zucker* v. *Vogt*, 329 F.2d 426, 430 (2d Cir. 1964). Notably, in *Pierce* v. *Albanese*, supra, 249, when addressing the constitutional challenge to § 30-102, this court had framed the question as "whether the purpose of the [act] is a legitimate one and whether the particular enactment is designed to accomplish that purpose in a fair and reasonable way." In addressing the fairness question, the court pointed out that, although the act does not require proof of a causal connection between the sale of intoxicating liquor to the intoxicated person and the subsequent injuries arising from the intoxication, "[t]he act does not impose absolute liability upon the permittee but leaves to him a number of defenses." Id., 252.

These cases suggest that intoxication, as used in §§ 30-86 and 30-102, requires some external manifestation of that condition that the purveyor could observe. In other words, by "plac[ing] the burden of determining whether or not the purchaser of liquor is intoxicated

upon the seller"; *State* v. *Katz*, supra, 122 Conn. 442; the legislature must have assumed that there would be an objective basis from which the seller could make such a determination through reasonable efforts. Such an interpretation makes eminent sense in light of the potential criminal consequences under § 30-86.[16] Cf. *State ex rel. Gutter* v. *Hawley*, 44 N.E.2d 815, 818–19 (Ohio App. 1942) (construing scheme permitting state liquor control board to suspend or revoke liquor permit for violation of provision barring sale to "intoxicated person" to require proof that person was "so far under the influence that his conduct and demeanor are not up to standard" and that "such condition or demeanor should be reasonably discernible to a person of ordinary experience"). Although we obviously are not bound by the Second Circuit's conclusion, and one might ascribe a narrower meaning to the term "intoxicated person" for purposes of a statute imposing a criminal penalty rather than civil liability, the symbiotic relationship between §§ 30-86 and 30-102 would seem to weigh strongly in favor of a consistent interpretation of the terms.

With that presumption in mind, we turn to *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 341. *Sanders* involved a challenge to a jury verdict in the plaintiff's favor on a § 30-102 claim. Id., 343. The defendant claimed, inter alia, that the trial court improperly had charged the jury and improperly had denied its motion for a directed verdict because the plaintiff had failed to prove that the patron tortfeasor, Louis Doerschuck, was intoxicated at the time the sale of alcoholic liquor was made to him. Id., 345, 351. Although this court's opinion did not specify the particular basis of the claim of instructional error, the briefs submitted to the court reflect that the defendant contended that the instruction had provided inadequate guidance on the meaning of intoxication because it had failed to make clear a distinction, not yet expressly recognized by the court, between being "under the influence" as used in § 14-227a and being "intoxicated" as used in § 30-102. *Sanders* v. *Officers Club of Connecticut, Inc.*, Conn. Supreme Court Records & Briefs, January Term, 1985, Pt. 1, Defendant's Brief pp. 5–9. The defendant asserted that intoxication is a stronger term, such that there would be obvious manifestations of the condition. Id., pp. 6–7. In support of this contention, the defendant pointed to, inter alia, this court's discussion of intoxication in *State* v. *Katz*, supra, 122 Conn. 442, and the legislature's purposeful choice of distinct terms in the two statutes. In response, the plaintiff contended that the instruction was proper because it contained no express reference to being under the influence of alcohol and, in any event, language in *Pierce* v. *Albanese*, supra, 144 Conn. 252, supported the view that an intoxicated person under the act is also one under the influence. *Sanders* v. *Officers Club of Connecticut, Inc.*,

Conn. Supreme Court Records & Briefs, supra, Plaintiff's Brief p. 4.

The court in *Sanders* rejected the defendant's claims. In responding to the challenge to the jury charge, the court set forth the elements of a § 30-102 claim, one of which required the plaintiff to prove that Doerschuck was intoxicated. *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 349. The court then explained: "To be intoxicated is something more than to be merely under the influence of, or affected to some extent by, liquor. Intoxication means an abnormal mental or physical condition due to the influence of intoxicating liquors, a visible excitation of the passions and impairment of the judgment, or a derangement or impairment of physical functions and energies. When it is apparent that a person is under the influence of liquor, when his manner is unusual or abnormal and is reflected in his walk or conversation, when his ordinary judgment or common sense are disturbed or his usual [willpower] temporarily suspended, when these or similar symptoms result from the use of liquor and are manifest, a person may be found to be intoxicated. He need not be 'dead-drunk.' It is enough if by the use of intoxicating liquor he is so affected in his acts or conduct that the public or parties coming in contact with him can readily see and know this is so.[17] This was in substance the instruction given to the jury."[18] Id., 349–50. The court thereafter rejected the defendant's sufficiency of the evidence claim, concluding that the "pyramiding facts," the pinnacle of which was Doerschuck's boisterous conduct at the bar, supported the plaintiff's verdict.[19] Id., 351.

The court's description of the meaning of intoxication is replete with references to perceivable signs of that condition, whether "visible," "apparent," "manifest" or "readily see[n] . . . ." Id., 349–50. Nonetheless, it must be conceded that this passage is susceptible to different interpretations on the question of whether such signs *must* be demonstrated in order to prevail under the act. In particular, it is not entirely clear what effect should be given the following sentence, which contains the only descriptive terms that do not expressly refer to perceivable signs: "Intoxication means an abnormal mental or physical condition due to the influence of intoxicating liquors, a visible excitation of the passions and impairment of the judgment, or a derangement or impairment of physical functions and energies." Id., 349. If this sentence is not modified, qualified or explained by the sentences that follow that expressly describe intoxication as a perceivable condition, then, conceivably, *Sanders* recognizes that recovery could be had under the act without proof of such signs. A closer examination and a contextual reading of the entire passage persuades us, however, that this passage should be read as a whole, under which it articulates various types of proof sharing a common element, under which

intoxication is a state of being, induced by the consumption of alcoholic liquor, that can be observed by the layperson through various indicators. In other words, intoxication under § 30-102 requires both an internal effect and an external manifestation.

We first note that perceivable indicators may be implicit in the only two descriptions of intoxication that do not expressly refer to such signs—"an abnormal mental or physical condition" and "a derangement or impairment of physical functions and energies." Id. In particular, physical conditions or effects of intoxication would seem likely to be perceivable. We also note that the court then went on to specify that the evidence will be sufficient, and a person may be found to be intoxicated, *when* perceivable signs of such mental or physical effects are present. Id., 349–50. Finally, we ascribe particular significance to the fact that the court in *Sanders* commenced its discussion with the conclusion that intoxication is more than merely being under the influence of intoxicating liquor; id., 349; and later explained that it is only when it is *apparent* that a person is under the influence that such person shall be considered intoxicated. Id., 349–50. Indeed, to the extent that *Sanders* can be interpreted to hold that intoxication under § 30-102 requires a greater effect due to alcohol ingestion than being under the influence under § 14-227a,[20] it is only by requiring proof of perceivable indicators that this distinction clearly may be drawn.

It also should be noted that, although no evidence of blood alcohol content or related expert testimony had been presented in *Sanders*, such evidence had been used in this state for more than twenty years before *Sanders*[21] and in other jurisdictions for many decades before that. See, e.g., *People* v. *Henry*, 23 Cal. App. 2d 155, 161, 72 P.2d 915 (1937); *Kuroske* v. *Aetna Life Ins. Co.*, 234 Wis. 394, 399–403, 291 N.W. 384 (1940). We are therefore not persuaded that this court would have been unaware of the use of such evidence when describing the requisite proof of intoxication. Indeed, the standard articulated in *Sanders* would not preclude reliance on such tests and expert opinion. In fact, in the present case, the defendants conceded before the trial court that, under *Sanders*, a plaintiff could establish visible intoxication through blood alcohol content and expert testimony, as long as the expert properly took into account all pertinent facts relating to the individual consuming the alcohol. Therefore, we also are not persuaded that this court intended its description to apply only to those cases in which lay testimony is the exclusive form of evidence. Accordingly, we read *Sanders*, consistent with our earlier case law, as describing intoxication as a physiological state accompanied by visible or otherwise perceivable indicators.[22]

We also note that this conclusion is consistent with

the legislature's treatment of the use of evidence of blood alcohol content. In § 14-227a, the legislature has prescribed and progressively lowered the requisite blood alcohol content to establish a violation of the motor vehicle offense of operating while under the influence of intoxicating liquor.[23] See Public Acts 1963, No. 616, § 1 (b) (establishing 0.15 as prima facie evidence); Public Acts 1971, No. 318 (lowering prima facie evidence to 0.10); Public Acts, Spec. Sess., May, 2002, No. 02-1, § 108 (lowering standard to 0.08 and deeming that level per se evidence of violation). In earlier revisions of that same statute, the legislature also previously has prescribed a specific blood alcohol content to establish a lesser offense, since repealed, of operating a vehicle while "impaired." See Public Acts 1983, No. 83-534, § 1 (b) (more than 0.07 but less than 0.10 blood alcohol content in General Statutes [Rev. to 1985] § 14-227a [b]); Public Acts, Spec. Sess., May, 2002, No. 02-1, § 108 (repealing impairment offense and fine in General Statutes [Rev. to 2003] § 14-227a [b]). The legislature has never, however, designated a specific blood alcohol content to establish intoxication under § 30-102 nor incorporated by reference § 14-227a or the essential phrase therein "under the influence of intoxicating liquor . . . ." Thus, in *Coble* v. *Maloney*, 34 Conn. App. 655, 664, 643 A.2d 277 (1994), the Appellate Court properly deduced that "§ 30-102 is not a per se offense that can be proven merely by establishing a blood alcohol level of [the then prescribed standard of] 0.10 percent or greater at the time the elements of the offense occurred . . . . [T]he results of the blood alcohol tests nonetheless may indicate that a person had imbibed intoxicating liquors, which is a key factor in determining whether an individual is intoxicated."

Although this court has not expressly addressed whether the statutorily prescribed blood alcohol content that per se establishes being under the influence also could establish intoxication for purposes of § 30-102, we implicitly have rejected that possibility by concluding that being "intoxicated" is a greater state of inebriation than being "under the influence." See *Wentland* v. *American Equity Ins. Co.*, supra, 267 Conn. 604–605; *State* v. *Lonergan*, 213 Conn. 74, 92 n.11, 566 A.2d 677 (1989), cert. denied, 496 U.S. 905, 110 S. Ct. 2586, 110 L. Ed. 2d 267 (1990), overruled in part on other grounds by *State* v. *Alvarez*, 257 Conn. 782, 794–95, 778 A.2d 938 (2001); *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 349. It is self-evident that the same blood alcohol content cannot establish different degrees of inebriation. More significantly for our purposes in the present case, the legislature's failure to designate a specific blood alcohol content as proof of a violation of § 30-102 inexorably leads to two conclusions: first, there is no standard of intoxication per se under § 30-102; and second, the absence of such a standard is wholly consistent with a construction of

§ 30-102 that requires proof of perceivable intoxication. In sum, there is considerable evidence in support of a conclusion that one cannot prevail on a claim under § 30-102 without proof that the patron was perceivably intoxicated as described in *Sanders*. This conclusion renders the meaning of §§ 30-86 and 30-102 consistent and rational.

Contrary to the plaintiff's view, *Craig* v. *Driscoll*, supra, 262 Conn. 312, does not compel a contrary result. In *Craig*, we considered whether § 30-102 manifested a legislative intent to occupy the field so as to preclude this court from recognizing a common-law negligence action against purveyors of alcohol. Id., 323–24. In answering that question in the negative, we explained why a common-law negligence action would neither conflict with the act nor thwart its underlying purpose, concluding in relevant part: "The act provides a means of recovery for plaintiffs who are unable to prove causation and culpability, subject to a statutory limitation on damages. . . . To prevail, a plaintiff simply must prove: (1) the sale of the alcoholic liquor; (2) that the sale was to an intoxicated person; and (3) that the intoxicated person caused injury to another's person or property as a result of his or her intoxication. . . . Accordingly, the act covers all sales of liquor that result in an intoxicated person causing injury, irrespective of the bar owner's knowledge or state of mind. The act thereby provides an action in strict liability, both without the burden of proving the element of scienter essential to a negligence action and without the benefit of the broader scope of recovery permitted under such an action." (Citations omitted.) Id., 327–28.

In considering the meaning of *Craig* as it bears on the issue in the present case, it is important to point out that *Craig* never addressed the meaning of intoxication under §§ 30-86 and 30-102 as articulated in this court's previous case law. It also is important to recognize that our construction of § 30-102 in *Craig* neither broke any new ground nor set forth any principles that conflicted with the definition of intoxication set forth in *Sanders*. This court long ago characterized § 30-102 as an action in the nature of strict liability. See *Lumbermens Mutual Casualty Co.* v. *Huntley*, 223 Conn. 22, 28 n.10, 610 A.2d 1292 (1992); see also *American Universal Ins. Co.* v. *DelGreco*, 205 Conn. 178, 198–99, 530 A.2d 171 (1987) (using no fault language); *Pierce* v. *Albanese*, supra, 144 Conn. 246–47 (rejecting defendant's challenges to § 30-102 based in part on no fault aspect of statute).[24] Indeed, because this characterization rests on the absence of a requirement of proof of a causal connection between the purveyor's sale of alcohol and the injuries arising from the tortfeasor's intoxication, even other jurisdictions having dram shop acts *expressly* requiring visible or apparent intoxication similarly characterize their acts as a statutory species of strict liability. See, e.g., *Delamater* v. *Kimmerle*, 104 App. Div. 2d 242, 243–44,

484 N.Y.S.2d 213 (1984); *Chartrand* v. *Coos Bay Tavern, Inc.*, 298 Or. 689, 695 n.4, 696 n.5, 696 P.2d 513 (1985); *Horton* v. *Royal Order of the Sun*, 821 P.2d 1167, 1168–69 (Utah 1991); *Swett* v. *Haig's, Inc.*, 164 Vt. 1, 4, 663 A.2d 930 (1995); see also *Scoggins* v. *Wal-mart Stores, Inc.*, 560 N.W.2d 564, 571 (Iowa 1997) (characterizing state's act, which requires that purveyor knew or should have known that patron was intoxicated, as strict liability). Our recognition that the act does not require proof of a purveyor's "culpability" similarly relates to the element of causation.

It also is self-evident that the statute contains no element of proof of the purveyor's knowledge or state of mind. Cf. *State* v. *Katz*, supra, 122 Conn. 441–42 (no knowledge of intoxicated condition required under § 30-86). Undoubtedly, when there are perceivable signs of intoxication, in many but not all cases a plaintiff likely would be able to establish that the purveyor at the very least should have known of the patron's condition. This result does not alter the fact that a plaintiff has no obligation to make such a showing under the act. As this court has recognized with respect to strict liability criminal statutes: "[S]trict liability offenses dispense with the mens rea of a crime, meaning that the possession of a guilty mind is not essential before a conviction can take hold. . . . In strict liability statutes, it is not required that the defendant know the facts that make his conduct fit the definition of the offense. . . . [Nonetheless, the defendant] if he does not will the violation, *usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities*." (Citations omitted; emphasis added; internal quotation marks omitted.) *State* v. *T.R.D.*, 286 Conn. 191, 219–20, 942 A.2d 1000 (2008).

Finally, we must acknowledge that, shortly after our decision in *Craig*, the legislature effectively overruled our holding in that case by expressly abrogating the common-law negligence action that this court had recognized. See Public Acts 2003, No. 03-91. Thus, to the extent that there arguably is any tension between *Craig* and *Sanders* or its predecessors, any such inconsistency would have to be resolved in favor of *Sanders*. Accordingly, the plaintiff's reliance on *Craig* as sub silencio overruling the interpretation of § 30-102 in *Sanders* as requiring proof of perceivable intoxication is misplaced.[25]

In reaching this conclusion, we are not unsympathetic to the concerns raised by the plaintiff, for which the amicus curaie Connecticut chapter of Mothers Against Drunk Driving offers some authority, that visible intoxication may be an unsafe standard because even persons trained to detect intoxication often fail to detect the point at which a person's blood alcohol

content reaches a level well above that permitted to drive legally. See J. Brick & C. Erickson, "Intoxication Is Not Always Visible: An Unrecognized Prevention Challenge," 33 Alcoholism: Clinical and Experimental Research (September 2009) 1498, 1505. That concern, however, is a matter of policy on which the legislature is free to weigh the competing concerns identified by the defendant. The fact that every jurisdiction that permits civil recovery for injuries arising from the sale of alcohol to an intoxicated person imposes a standard requiring some manifestation of intoxication and/or the purveyor's actual or constructive knowledge of the patron's intoxicated state; see footnote 12 of this opinion; suggests that other legislatures have found these competing concerns more compelling and such a standard consistent with the purpose of dram shop legislation.

We are mindful that it has been the legislature's goal to place the burden of preventing harm to the public that results from the sale of alcoholic liquor on those that profit from its sale. See *Pierce* v. *Albanese*, supra, 144 Conn. 249–50 (citing protection of public as one purpose of act); see also *All Brand Importers, Inc.* v. *Dept. of Liquor Control*, 213 Conn. 184, 198, 567 A.2d 1156 (1989) ("[w]e have recognized the pervasiveness of the state's control over the liquor business . . . [b]ecause of the danger to the public health and welfare inherent in . . . liquor traffic" [internal quotation marks omitted]). Nonetheless, there is good cause to question the fairness and incremental gains to public safety of a construction under which a purveyor will be liable for injuries caused by an intoxicated patron even if it has taken every reasonable precaution to avoid selling alcohol to patrons who appear to have reached a point of intoxication.[26] Moreover, the burden of proof articulated in *Sanders* is not onerous. As we explain further in part II of this opinion, any perceptible indicator of intoxication at the time of service, including excessive alcohol consumption itself, can be sufficient to deem the purveyor on notice of its potential exposure to liability under the act and thus permit recovery. This standard reasonably balances the concerns expressed by the plaintiff and those expressed by the defendants. Accordingly, we conclude that the Appellate Court properly determined that the judgment must be reversed.

II

We next consider the plaintiff's claim that the Appellate Court improperly reversed the judgment and remanded the case with direction to render judgment for the defendants rather than remanding it for a new trial. The plaintiff contends that the Appellate Court improperly construed the trial court's ruling in his favor on his motion in limine, which sought to preclude argument or evidence that visible signs of intoxication are

required, "narrowly [as] limited to the permissible scope of the parties' opening statement[s]." *O'Dell* v. *Kozee*, supra, 128 Conn. App. 805–806 n.12. The plaintiff claims that he was entitled to rely on the trial court's ruling and that he should be afforded an opportunity to produce evidence of visible intoxication if we conclude that this ruling was improper. The defendants respond that the trial court's ruling did not preclude the plaintiff from presenting such evidence, that no such evidence was presented and that the plaintiff's expert testified to the contrary. Thus, the defendants contend that a new trial would be pointless. We conclude that the plaintiff is entitled to a new trial.

We first note that our review of the record convinces us that, contrary to the Appellate Court's conclusion, the trial court did not limit its ruling on the plaintiff's motion in limine to opening arguments to the jury. Rather, the court made clear throughout the proceedings that visible signs of intoxication are not required under the act and that the defendants would not be permitted to argue or adduce testimony indicating to the contrary. Therefore, the plaintiff was entitled to rely on the trial court's ruling and pursue a trial strategy that did not implicitly put before the jury an issue that the plaintiff understood not to be an element of a claim under the act. As we previously have explained in an analogous context, a party generally is entitled to a new trial when that party has presented sufficient evidence to satisfy the legal standard under which the jury had been instructed and on appeal a different standard is determined to be required. See *State* v. *Sanseverino*, 291 Conn. 574, 588–89, 969 A.2d 710 (2009). We presume that "[a]ny insufficiency in proof was caused by the subsequent change in the law . . . [and] not the [party's] failure to muster evidence." (Internal quotation marks omitted.) Id., 588. In the present case, the trial court agreed with the plaintiff's view of the law and the plaintiff tried his case in accordance with that framework.

Moreover, we disagree with the defendants that the plaintiff presented no evidence from which a jury reasonably could conclude that Pracher was intoxicated at the time of the sale of liquor and that a new trial would be pointless because no such evidence would be available. First, the plaintiff's expert, McKay, conceded on cross-examination that, without additional facts, he could not offer an opinion as to whether Pracher would have exhibited signs of intoxication during specific times at which he was served alcohol after reaching a highly elevated blood alcohol content. On remand, the plaintiff may be able to establish such facts. Second, McKay opined that Pracher would have had to consume a *minimum* of fifteen alcoholic beverages, and more likely in excess of twenty, to have reached a blood alcohol content of 0.187 at the time his blood was drawn.[27] In the absence of evidence that Pracher's

plan at the outset of the evening was to drink to the point of intoxication, a jury reasonably could find that imbibing to such excess is a visible sign of impaired judgment due to alcohol consumption, one example of competent evidence of intoxication identified in *Sanders*.[28] See *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 349–50 ("when [a person's] ordinary judgment or common sense are disturbed or his usual [willpower] temporarily suspended, when these or similar symptoms result from the use of liquor and are manifest, a person may be found to be intoxicated"). This evidence, along with Pracher's testimony that he was drunk while at the bar, a police officer's testimony that Pracher strongly smelled of alcohol at the time of the accident, and the circumstances of the accident reflecting Pracher's seriously impaired functions would be sufficient evidence to submit this case to a jury. Cf. id., 350–51 (service to intoxicated person established by evidence of patron's pattern of drinking, complaints about patron's loud conduct, testimony that patron walked "normally" when he left tavern but thereafter took roundabout route driving home without lights, and patron's admission that he never saw vehicles with which he collided on side of highway and was unable to recall many events of evening). Indeed, the defendants cannot reasonably contend that a purveyor would be unable to observe such excessive consumption and should be under no legal obligation to stop service to the patron at some earlier point in time.

Finally, although *Sanders* requires perceivable intoxication, we ascribe some significance to the fact that our legislature did not require "obvious" intoxication, or like term, as have other jurisdictions. See footnote 12 of this opinion. Indeed, to require that the intoxication be patently obvious would render the standard under § 30-102 essentially the same as that required to prevail in a common-law action for wilful, wanton and reckless service of alcohol that this court previously recognized and that still remains viable. See *Kowal* v. *Hofher*, 181 Conn. 355, 359–62, 436 A.2d 1 (1980); see, e.g., *Futterleib* v. *Mr. Happy's, Inc.*, 16 Conn. App. 497, 510, 548 A.2d 728 (1988) (reckless and wanton sale of alcohol to intoxicated person when intoxication was obvious at time of service). In this regard, we find instructive another court's discussion of the difference between being "intoxicated" and being "obviously intoxicated" under different versions of that state's dram shop act. See *Mjos* v. *Howard Lake*, supra, 287 Minn. 427. That court explained: "The statutory prohibition upon sales of intoxicating liquor to persons already intoxicated . . . applies only if the intoxication is observable in the appearance or behavior of the person to whom the intoxicating liquor is furnished. . . . [F]or a person to be intoxicated 'there must be such outward manifestation of intoxication that a person using his reasonable powers of observation can see or should

see that such person has become intoxicated.' . . . [W]hen intoxicating liquor has affected the user's reason or his faculties, or has rendered him incoherent of speech or has caused him to lose control of his actions or the motions of his body, he is intoxicated. These manifestations would be observable. . . .

"[T]here may be a broad spectrum of behavior ranging from a minimal loss of control of mental or bodily function which would be observable to the reasonably prudent man making an affirmative effort of observation, to a state of intoxication so obvious as to be inescapably evident to anyone with functioning senses. We recognize that the various stages of intoxication cannot be defined precisely because individuals react differently to the influence of liquor depending upon the circumstances of consumption, among other things. However, the words 'obviously intoxicated' evoke a concept substantially different from that elicited by the simple word 'intoxicated.' While both states of intoxication must be manifest in the subject's behavior, the state of 'obvious' intoxication would be readily and plainly evident without affirmative effort to perceive it and so clear that the observer would be bound to notice. Although a person is not 'obviously intoxicated,' the fact that he is 'intoxicated' would be discoverable by reasonably active observation of his appearance, breath, speech, and actions. . . . This may require the supplier of liquor to engage the prospective purchaser in conversation, to note specifically the details of the purchaser's physical appearance, to observe the purchaser's conduct during the course of his drinking at the supplier's establishment, or to scrutinize the actions of the prospective customer in other ways by which the supplier may detect intoxication which is observable even though not obvious." (Citations omitted.) Id., 432–35. This description of intoxication is consistent with the view expressed by this court in *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 349–50, and *State* v. *Katz*, supra, 122 Conn. 441–43. Accordingly, on remand, the plaintiff need prove only that signs of Pracher's intoxication could have been observed, not that they would have been obvious to anyone coming into contact with him.[29]

The judgment of the Appellate Court is affirmed in part and reversed in part, and the case is remanded to that court with direction to remand the case to the trial court for a new trial.

In this opinion NORCOTT, PALMER, ZARELLA and McLACHLAN, Js., concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

** September 28, 2012, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] "The term 'dram shop' is derived from the fact that commercial establishments typically sold liquor by the dram, a unit of measurement less than a gallon, in the 1800's, when 'Dram Shop' Acts were first introduced in this country." *Godfrey* v. *Boston Old Colony Ins. Co.*, 718 So. 2d 441, 444 n.2

(La. App. 1998).

[2] General Statutes § 30-102 provides: "If any person, by such person or such person's agent, sells any alcoholic liquor to an intoxicated person, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another, such seller shall pay just damages to the person injured, up to the amount of two hundred fifty thousand dollars, or to persons injured in consequence of such intoxication up to an aggregate amount of two hundred fifty thousand dollars, to be recovered in an action under this section, provided the aggrieved person or persons shall give written notice to such seller of such person's or persons' intention to bring an action under this section. Such notice shall be given (1) within one hundred twenty days of the occurrence of such injury to person or property, or (2) in the case of the death or incapacity of any aggrieved person, within one hundred eighty days of the occurrence of such injury to person or property. Such notice shall specify the time, the date and the person to whom such sale was made, the name and address of the person injured or whose property was damaged, and the time, date and place where the injury to person or property occurred. No action under the provisions of this section shall be brought but within one year from the date of the act or omission complained of. Such injured person shall have no cause of action against such seller for negligence in the sale of alcoholic liquor to a person twenty-one years of age or older."

[3] Throughout much of the proceedings and in the petition for certification the question has been framed as whether the plaintiff must prove that the purchaser was *visibly* intoxicated. The Appellate Court noted, however, that " '[v]isible intoxication' is shorthand for intoxication that is 'manifest' or perceivable by the senses of others, and is not necessarily limited strictly to the sense of vision." *O'Dell* v. *Kozee*, 128 Conn. App. 794, 799 n.7, 19 A.3d 672 (2011). Accordingly, we reframe the certified question in accordance with the Appellate Court's actual standard—whether proof of visible or otherwise perceivable intoxication is required. See *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 191, 884 A.2d 981 (2005) (court may reframe certified question "to reflect more accurately the [issue] presented").

[4] The plaintiff also named L.C.B. Entities, LLC, the corporate entity doing business as Deja Vu Restaurant, and Lori C. Bard, the principal member of L.C.B. Entities, LLC, as defendants.

[5] In its recitation of the facts, the Appellate Court appears to have credited Pracher's testimony, in which he recalled having at least five beers, two shots of alcohol and a brandy. *O'Dell* v. *Kozee*, supra, 128 Conn. App. 797. The Appellate Court also noted, however, that Pracher further testified that he was too drunk to remember if he consumed more alcoholic beverages after 10 p.m.; id., 797 n.4; thus failing to account for his consumption for almost three hours. A friend of Pracher's who also drank to the point of being "drunk" at the bar on the night of the accident recalled Pracher having at least five beers and four shots of alcohol, including tequila. The plaintiff's expert, Charles McKay, opined that, taking into account Pracher's size and weight, Pracher would have had to have consumed at least fifteen, and more likely twenty or more, drinks to have reached a blood alcohol content consistent with the test results obtained following the accident. Because we view the facts in the light most favorable to sustaining the verdict in favor of the plaintiff, we assume that the jury credited McKay's testimony.

[6] Under the civil commitment scheme, " '[i]ntoxicated person' " is defined as "a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs . . . ." General Statutes § 17a-680 (13). The two statutes we previously have cited in which the legislature has added some descriptive term to intoxication to indicate that some visible manifestation of that state may be required, §§ 17a-683 and 17a-690, are subject to this definition. Intoxication is defined for purposes of an affirmative defense under our Penal Code as "a substantial disturbance of mental or physical capacities resulting from the introduction of substances into the body." General Statutes § 53a-7. Although the dissent points to these definitions as support for its broad construction of § 30-102, we find it more likely that the legislature concluded that it was necessary to provide these definitions precisely because, as we later explain herein, intoxication is not a term with universal meaning, but, rather, one that is context dependent.

[7] Our state's first dram shop legislation was enacted in 1872, and required that the sale of intoxicating liquor had caused a person's intoxication. See *Nolan* v. *Morelli*, 154 Conn. 432, 437–38, 445, 226 A.2d 383 (1967). The statute in its essential current form was enacted in 1933, shortly after the repeal

of Prohibition. Id., 438.

[8] See *Tracy* v. *Brecht*, supra, 3 Cal. App. 2d 111 (citing J. Wigmore, Evidence [3d Ed. 1940] § 933, which addressed witness' capacity to testify and provides that "[i]ntoxication, if it is of such a degree as to deserve the name, involves a numbing of the faculties so as to affect the capacity to observe, to recollect or to communicate" [internal quotation marks omitted]).

[9] See *Kukulski* v. *Bolda*, 2 Ill. 2d 11, 17, 116 N.E.2d 384 (1953) ("Whenever a man is under the influence of liquor so as not to be entirely at himself; he is intoxicated, although he can walk straight, although he may attend to his business, and may not give any outward and visible sign to the casual observer that he is drunk. The inquiry is whether the individual was in such mental condition as to fully understand and appreciate the force and effect of the bargain he made . . . and to protect his own interest in the transaction." [Citation omitted; internal quotation marks omitted.]).

[10] See *Paris & Great Northern Railroad Co.* v. *Robinson*, supra, 104 Tex. 487 ("[w]e think the rule in this [s]tate is, with reference to the duty of the carrier of intoxicated persons accepted for transportation, and where such persons are injured or killed, that in order to deny the effect of the plea of contributory negligence, it should be required of the person seeking such recovery to show that the intoxicated person so injured or killed was so intoxicated as to be mentally or physically incapable of protecting himself from danger, or of appreciating the danger to himself as a consequence of his acts and that this condition was known to the agent and servant of the carrier through whose negligence the injury or death is alleged to have resulted").

[11] See *Wilson* v. *Inter-Ocean Casualty Co.*, 210 N.C. 585, 592, 188 S.E. 102 (1936) ("broadly speaking, the words intoxicated, intoxicants, and narcotics, as used in provisions in accident policies, excluding liability for injury or death while intoxicated or under the influence of intoxicants or narcotics, mean that the insured has used liquors or drugs to such an extent as to disturb the action of his mental or physical faculties, and that his sense of responsibility is substantially or materially impaired" [internal quotation marks omitted]).

[12] The following jurisdictions that have enacted dram shop acts expressly require these conditions to be met: Ariz. Rev. Stat. Ann. § 4-311 (2011); Ark. Code Ann. § 16-126-104 (2006); Colo. Rev. Stat. § 12-47-801 (2011); Ga. Code Ann. § 51-1-40 (2000); Idaho Code § 23-808 (2009); Ind. Code Ann. § 7.1-5-10-15.5 (LexisNexis 2007); Iowa Code § 123.92 (2011); Ky. Rev. Stat. Ann. § 413.241 (LexisNexis 2005); Me. Rev. Stat. Ann. tit. 28-A, § 2506 (2011); Mich. Comp. Laws § 436.1801 (2011); Miss. Code Ann. § 67-3-73 (2005); Mo. Rev. Stat. § 537.053 (2000); Mont. Code Ann. § 27-1-710 (2012); N.H. Rev. Stat. Ann. § 507-F:4 (2010); N.J. Stat. Ann. § 2A:22A-5 (West 2010); N.M. Stat. Ann. § 41-11-1 (LexisNexis 1996); N.D. Cent. Code § 5-01-06.1 (2006); Ohio Rev. Code Ann. § 4399.18 (West 2008); Or. Rev. Stat. § 471.565 (2011); Pa. Stat. Ann. § 4-497 (West 1997); R.I. Gen. Laws § 3-14-6 (LexisNexis 1998); Tenn. Code Ann. § 57-10-102 (2002); Tex. Alco. Bev. Code Ann. § 2.02 (Vernon 2002); Utah Code Ann. § 32B-15-201 (2011); Vt. Stat. Ann. tit. 7, § 501 (2011). But see 235 Ill. Comp. Stat. Ann. 5/6-21 (West 2005) (imposing liability under different conditions than other states' dram shop acts by having liability arise upon sale of alcohol that *causes* intoxication rather than sale to already intoxicated person and thus containing no requirements of perceivable intoxication or knowledge by purveyor). A few states have dram shop acts that permit recovery for the violation of applicable criminal or administrative statutes that proscribe the selling of alcohol to intoxicated persons. In these states, either the dram shop act itself or the applicable criminal or administrative statute expressly contain "perceivability" and/or "knowledge" elements like the dram shop acts catalogued previously in this footnote. See Ala. Code § 6-5-71 (2005); Alaska Stat. § 04.21.020 (2010); Minn. Stat. Ann. § 340A.801 (West 2012); N.Y. Gen. Oblig. Law § 11-101 (McKinney 2010).

[13] General Statutes § 30-86 (b) provides in relevant part: "(1) Any permittee or any servant or agent of a permittee who sells or delivers alcoholic liquor to any minor or any intoxicated person, or to any habitual drunkard, knowing the person to be such an habitual drunkard, shall be subject to the penalties of section 30-113. . . .

"(3) The provisions of this subsection shall not apply . . . (B) to a sale, shipment or delivery made in good faith to a minor who practices any deceit in the procurement of an identity card issued in accordance with the provisions of section 1-1h, who uses or exhibits any such identity card belonging to any other person or who uses or exhibits any such identity card that has been altered or tampered with in any way . . . ."

[14] Notably, as support for this proposition, the court cited to *State* v. *Kinkead*, 57 Conn. 173, 17 A. 855 (1889); see *State* v. *Katz*, supra, 122 Conn. 441–42; wherein this court similarly had explained with respect to the predecessor to § 30-86 as applied to the sale of alcohol to minors: "The ages of persons who frequent such places may be easily ascertained. Inquiry properly directed can hardly fail to elicit the desired information. If a case of doubt should arise, he can, without harm or detriment to his business or himself, keep on the safe side. It is not unreasonable that the responsibility should be thrown on him. If he neglects to use the necessary means to ascertain the age, the legislature may well say that his want of knowledge shall not excuse him." *State* v. *Kinkead*, supra, 180.

[15] The court in *Pierce* did not specifically address the vagueness of the terms referring to intoxication. In that case, the court noted: "The defendant claims that such an interpretation renders the act unconstitutional because it imposes liability irrespective of any causal relation between the sale of the intoxicating liquor to an intoxicated person and the injury which follows as a result of the intoxication. Such an interpretation, so the defendant alleges, imposes liability without fault and makes the statute arbitrary, vague and unreasonable and therefore violative of the equal protection and due process provisions of the federal and state constitutions. U.S. Const. [a]mend. XIV, § 1; Conn. Const. [a]rt. I, §§ 1, 12.

"The defendant has advanced no compelling reason why the construction which we have already given the language of the statute should be changed and the statute construed so as to require proof of a causal relation between the sale of intoxicating liquor and the intoxication which caused injury." *Pierce* v. *Albanese*, supra, 144 Conn. 246–47. "The constitutional validity of [the act] depends upon whether it is a proper legislative exercise of the police power of the state. . . . Since the liquor business is one which can be dangerous to the public health, safety and morals, the range of legislative power to deal with it necessarily is a very wide one. . . . The multitude of automobiles on the public highways enhance the danger." (Citations omitted.) Id., 247–48. "The court's function in examining the constitutional aspect of police legislation is to decide whether the purpose of the legislation is a legitimate one and whether the particular enactment is designed to accomplish that purpose in a fair and reasonable way. If an enactment meets this test, it satisfies the constitutional requirements of due process and equal protection of the laws." Id., 249.

[16] The logic of this construction is reinforced when sale to an intoxicated person under § 30-86 is examined in connection with the other two sales for which a permittee may incur criminal penalties. A permittee is not criminally liable for sale of intoxicating liquor to an habitual drunkard unless the sale was made "knowing the person to be such an habitual drunkard . . . ." General Statutes § 30-86 (b) (1). Similarly, a permittee is not liable for sale "made in good faith to a minor who practices any deceit in the procurement of an identity card . . . who uses or exhibits any such identity card belonging to any other person or who uses or exhibits any such identity card that has been altered or tampered with in any way . . . ." General Statutes § 30-86 (b) (3) (B). It is only when the term "intoxicated person" is construed to embody a perceivable state that the three categories of sales in § 30-86 achieve some logical parity, in that, with the exercise of reasonable care, the purveyor should be able to avoid making an illegal sale.

[17] Although this court in *Sanders* did not cite to any authority in connection with its discussion of the meaning of intoxication and the proof of that condition, the substantial similarity to certain definitions of intoxication and jury charges favorably cited by other courts would suggest that this court had looked to these sources. See *Freeburg* v. *State*, 92 Neb. 346, 350, 138 N.W. 143 (1912) ("[t]he word intoxication means an abnormal mental or physical condition, due to the influence of alcoholic liquors, a visible excitation of the passions and impairment of the judgment, or a derangement or impairment of physical functions or energies" [internal quotation marks omitted]); *Mutual Life Ins. Co.* v. *Johnson*, supra, 64 Okla. 223 ("[w]hen it is apparent that a person is under the influence of liquor, or when his manner is unusual or abnormal, and his inebriated condition is reflected in his walk or conversation, when his ordinary judgment and common sense are disturbed, or his usual [willpower] is temporarily suspended, when these or similar symptoms result from the use of liquors and are manifest, then the person is intoxicated" [internal quotation marks omitted]); *Lafler* v. *Fisher*, 121 Mich. 60, 62–63, 79 N.W. 934 (1899) ("When it is apparent that a person is under the influence of liquor, or when his manner is unusual or abnormal, and his inebriated condition is reflected in his walk or conversa-

tion, when his ordinary judgment and common sense are disturbed, or his usual [willpower] is temporarily suspended, when these or similar symptoms result from the use of liquors, and are manifest, then, within the meaning of the statute, the person is intoxicated, and any one who makes a sale of liquor to such person violates the law of the [s]tate. It is not necessary that the person should be so-called dead drunk or hopelessly intoxicated; it is enough that his senses are obviously destroyed or distracted by the use of intoxicating liquors." [Internal quotation marks omitted.]); *St. Louis, Iron Mountain & Southern Railway Co.* v. *Waters*, 105 Ark. 619, 624, 152 S.W. 137 (1912) (stating when defining intoxication and drunkenness, terms that court treated as synonymous, that "[a] man may be said to be drunk whenever he is under the influence of intoxicating liquors to the extent that they affect his acts or conduct, so that persons coming in contact with him could readily see and know that the intoxicating liquors were affecting him in that respect"). Notably, in *Freeburg* v. *State*, supra, 349–50, the Nebraska Supreme Court held that it was improper to give a jury charge that focused only on visible signs that might indicate intoxication without also requiring the jury to find that the condition of intoxication existed. This view is consistent with the articulation of intoxication in *Sanders* as requiring both an internal effect and an external manifestation.

[18] The portion of the jury charge to which the defendant in *Sanders* objected had provided: "In considering these elements of [§ 30-102], that is to say, to determine whether the sale was made to an intoxicated person, you may [rely] on your own good judgment and experience in life utilizing that good judgment and experience and weighing the evidence relating to his conduct and to his condition. Apparently, to some people, there are varying degrees of intoxication. And apparently, alcoholic liquor can affect the user in different ways. Some become hilarious, others harmless, others become dangerous and destructive, but the harmless ones, or the ones who become hilarious and destructive may still be an intoxicated person, even if he does no more than argue or create noise. If, as a result of consuming alcoholic liquor, the consumer evidences an impairment of the use of his normal facilities, which leads him to conduct he would not otherwise engage in, or evidences an irresponsibility obviously caused by the unnatural stimulation and attributable to such consumption of alcoholic liquor, then he may be regarded as being an intoxicated person." (Internal quotation marks omitted.) *Sanders* v. *Officers Club of Connecticut, Inc.*, Conn. Supreme Court Records & Briefs, supra, Defendant's Brief pp. 5–6.

[19] With respect to the defendant's claim that the plaintiff had failed to prove that Doerschuck was intoxicated at the time the sale of alcoholic liquor was made, the court stated: "We disagree. In our opinion, the pyramiding facts seem not merely plausible but inevitable. Doerschuck was drinking at noontime. He resumed his drinking immediately after work. His conduct was such that the patrons coming in contact with him complained to management. He was warned, not once, but twice, concerning his boisterous behavior. He left for home, but took a roundabout route. He drove, almost an hour after sunset, without lights. He was unable to recall many of the events of the evening and testified guardedly. He never saw the vehicles with which he collided on the side of the highway. On all of the evidence, we conclude that the jury reasonably could have found facts to prove that a state of intoxication existing in Doerschuck at the time of a sale of alcoholic liquor to him by the defendant continued through to, and constituted a proximate cause of, the collision." *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 351. Thus, while Doerschuck's boisterous behavior at the bar was the essential visible sign of intoxication, his drinking prior to arriving at the bar provided the requisite proof of intoxication as the cause of his behavior at the bar, whereas his conduct after leaving the bar provided the requisite proof of intoxication as the proximate cause of the accident. Each of these elements were necessary to prevail under the act.

[20] In two subsequent cases, this court relied on *Sanders* to conclude that intoxication under § 30-102 is a greater state of inebriation than being under the influence under § 14-227a. See *Wentland* v. *American Equity Ins. Co.*, supra, 267 Conn. 604–605; *State* v. *Lonergan*, 213 Conn. 74, 92 n.11, 566 A.2d 677 (1989). Prior to these decisions, the Appellate Court had considered this question at length and concluded that *Sanders* did not intend to draw a distinction between the statutory terms. See *State* v. *McKenna*, 11 Conn. App. 122, 132, 525 A.2d 1374, cert. denied, 205 Conn. 806, 531 A.2d 939 (1987). In addition to some of the reasons cited in *McKenna*, we note other evidence indicating that the court in *Sanders* may have used the term "under the influence" as a term of art or common expression, rather than as a

shorthand reference to the standard under § 14-227a. In particular, the court treated the phrase "under the influence" as comparable to "affected to some extent." *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 349. The court in *Sanders* never cited § 14-227a nor employed any of the tools of statutory construction that this court typically would utilize to reach such a conclusion. Nonetheless, we also note that the defendant in *Sanders* expressly had argued about the meaning of these terms in relation to §§ 14-227a and 30-102. Thus, it also is difficult to assume that the court was unmindful that the term "under the influence" might be construed to refer to § 14-227a.

Having employed our tools of construction, we note that there is evidence that, although the legislature may have viewed the terms "intoxicated" and "under the influence of intoxicating liquor" as synonymous at one time, it later drew a distinction between the terms. Public acts relating to early predecessors to § 14-227a used both terms. See, e.g., Public Acts 1921, c. 400, § 30 (entitling act enacting predecessor to § 14-227a as "Operation while intoxicated" while referring to operating "under the influence of intoxicating liquor" in text); Public Acts 1963, No. 616 (entitled "An Act Concerning Implied Consent to Tests for Intoxication" while referring to operating "under the influence of intoxicating liquor" in text). When the legislature lowered the standard for prima facie evidence of operating a motor vehicle while under the influence from a blood alcohol content of 0.15 to 0.10, however, it referred only to "being under the influence." See Public Acts 1971, No. 318 ("An Act Concerning Evidence of Ten-Hundredths of One Per Cent or More of Alcohol by Weight as Prima Facie Evidence of Operating Under the Influence of Intoxicating Liquor"); see also Public Acts 1985, No. 85-596 ("An Act Establishing a 'Per Se' Standard for Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor"). In 1985, the legislature substituted the term "under the influence of intoxicating liquor" for the terms "intoxicated" and "intoxication" in two criminal statutes relating to drunk driving while indicating that this change would lower the proof necessary for conviction. See Public Acts 1985, No. 85-147, §§ 1 and 2 (amending General Statutes [Rev. to 1985] §§ 53a-56b and 53a-60d, manslaughter in second degree with motor vehicle and assault in second degree with motor vehicle, respectively). The legislative history relating to these amendments suggest that the legislature ultimately acquiesced to the courts' practice of treating the two terms differently. See Conn. Joint Standing Committee Hearings, Judiciary, Pt. 1, 1985 Sess., p. 332, remarks of Representative Edith G. Prague; 28 H.R. Proc., Pt. 9, 1985 Sess., pp. 3129–30, remarks of Representative Robert F. Frankel.

[21] See Public Acts 1963, No. 616 (enacting first provisions for blood alcohol tests); see also *State* v. *Riley*, 24 Conn. Sup. 235, 239–40, 189 A.2d 518 (1962) (first published opinion in this state in which blood alcohol content was used as evidence of operating under influence in violation of predecessor to § 14-227a, General Statutes [Rev. to 1961] § 14-227); *Shea* v. *Slezak*, 20 Conn. Sup. 181, 183, 129 A.2d 233 (1956) (evidence of blood alcohol content proffered in dram shop case deemed irrelevant in light of jury finding that defendant purveyor had not sold alcohol to tortfeasor on day of incident giving rise to injury).

[22] We note that, in the present case, the trial court construed language in *Wentland* v. *American Equity Ins. Co.*, supra, 267 Conn. 592, to indicate that *Sanders* simply provides various examples of intoxication, not a standard of intoxication for § 30-102. It is our view that the trial court misread *Wentland*. In *Wentland*, this court considered "whether the defendant insurer had a duty to defend certain actions brought against its insureds alleging injuries resulting from the insureds' service of alcohol, where the insurance policy contained a clause excluding claims for which the insureds may be liable by reason of causing or contributing to the intoxication of any person . . . ." (Internal quotation marks omitted.) Id., 594. The court noted: "The defendant argues that the plaintiffs' allegations fall within our definition of intoxication in *Sanders*. In that regard, the defendant points out that *Sanders* defines intoxication in a number of ways, for instance, an abnormal mental or physical condition due to the influence of intoxicating liquors, or a derangement or impairment of physical functions and energies. . . . Accordingly, the defendant contends, the allegations in the underlying complaints, which alleged that [the driver's] consumption of alcohol caused her to be unable to control her vehicle, or caused her driving ability to become impaired, are essentially synonymous with, say, an impairment of physical functions and energies, and, therefore, fall squarely within the *Sanders* formulation. We disagree.

"Although the definition of intoxication set forth in *Sanders* goes on to provide examples that would be sufficient to support a finding of intoxication, for instance, a derangement or impairment of physical functions and energies . . . these differing examples cannot . . . relieve the defendant of its duty to defend. First, keeping in mind the context in which this court decided *Sanders*, *these examples do not inform what constitutes intoxication as a matter of law; rather, they merely provide illustrations of what will be sufficient to support the factual finding that a purchaser of alcohol was intoxicated for purposes of the* [*act*]. In that regard, merely because a trier of fact ultimately may conclude that the plaintiffs' injuries in the present case were the result of [the driver's] intoxication, it does not follow that the allegations in the complaint, for instance, that [the driver's] consumption of alcohol at [the bar] caused her to be unable to control her vehicle, compel the conclusion that [the driver] must have been intoxicated as a matter of law. Because an insurer's duty to defend is triggered without regard to the likelihood that it ultimately may be required to indemnify the insured, the examples in *Sanders*, setting forth what may be sufficient to establish intoxication at trial, cannot relieve the defendant of its duty to defend." (Citations omitted; emphasis added; internal quotation marks omitted.) Id., 608–609.

We do not disagree with the court's description of *Sanders* in *Wentland* as articulating different ways that intoxication can be established. The court in *Wentland* did not consider, however, whether a common element to each is a perceivable condition. The court's discussion of *Sanders* in *Wentland* simply was intended to make the point that, although intoxication for purposes of the act can be established through various forms of proof, the plaintiff's allegations could not establish intoxication as a matter of law such that it would dictate the meaning of intoxication *under the insurance policy*. See also id., 609 n.12 (making similar point when rejecting defendant's reliance on *State* v. *Katz*, supra, 122 Conn. 442, which had relied on condition of intoxication as matter of common knowledge, as establishing what constitutes intoxication as matter of law).

[23] General Statutes § 14-227a (a) provides in relevant part: "A person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle (1) while under the influence of intoxicating liquor or any drug or both, or (2) while such person has an elevated blood alcohol content. For the purposes of this section, 'elevated blood alcohol content' means a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight, except that if such person is operating a commercial motor vehicle, 'elevated blood alcohol content' means a ratio of alcohol in the blood of such person that is four-hundredths of one per cent or more of alcohol, by weight . . . ." Thus, under subsection (a) (1), a violation of § 14-227a also can be established by proof of being under the influence of intoxicating liquor. Under long established case law, being under the influence for purposes of § 14-227a or its predecessor relates to one's impaired functioning vis-á-vis the safe operation of a vehicle. See *State* v. *Andrews*, 108 Conn. 209, 216, 142 A. 840 (1928) (offense of driving under influence of intoxicating liquor "is established when the evidence shows that the driver of an automobile, by reason of having drunk intoxicating liquor, had become so affected in his mental, physical or nervous processes that he lacked to an appreciable degree, the ability to function properly in relation to the operation of the machine"); accord *Higgins* v. *Champ*, 161 Conn. 200, 203, 286 A.2d 313 (1971) (same); *Infeld* v. *Sullivan*, 151 Conn. 506, 509, 199 A.2d 693 (1964) (same).

[24] The trial court decision that this court affirmed in *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 341, similarly noted: " 'Dram Shop' or Civil Liability Acts are classified as a form of strict liability. [W.] Prosser, Torts (3d Ed. [1964]) § 79, p. 542, citing *Pierce* v. *Albanese*, [supra, 144 Conn. 241]." *Sanders* v. *Officers Club of Connecticut, Inc.*, 35 Conn. Sup. 91, 93, 397 A.2d 122 (1978).

[25] We note that a minority of trial court decisions similarly have concluded that the strict liability language in *Craig* is incompatible with a requirement of visible signs of inebriation. See *Coderre* v. *Gates*, Superior Court, judicial district of New London at Norwich, Docket No. CV-05-4102186-S (December 23, 2005) ("visibility of intoxication at the time of service of alcohol is not a specific requirement to prove intoxication based upon [*Craig* v. *Driscoll*, supra, 262 Conn. 328]); *Kane* v. *Decrescenzo*, Superior Court, judicial district of Waterbury, Docket No. CV-06-5003147-S (December 29, 2008) (same); see also *Cappello* v. *Lowman*, Superior Court, judicial district of Fairfield,

Docket No. CV-05-4005318-S (May 2, 2008) ("plaintiff does not need to prove that the bartender knew that [the patron] was intoxicated when he sold liquor to her . . . [but] merely has to prove that the defendants' employee sold liquor to [the patron] . . . while she was intoxicated"). These courts reached this conclusion despite the fact that, in 2005, the Appellate Court squarely held that *Sanders* requires evidence of perceivable signs of intoxication. See *Hayes* v. *Caspers, Ltd.*, supra, 90 Conn. App. 802.

The question as to the meaning and effect of *Craig* may explain why bills were proposed in 2007 to amend § 30-102 to, inter alia, add the term "visibly" before "intoxicated person." See Substitute House Bill No. 7053, January, 2007 Sess.; Raised Bill No. 7185, January, 2007 Sess.; see also Uncalled Amendment to Substitute Senate Bill No. 1026, January, 2009 Sess. In committee hearings on the 2007 bills, a representative of the Connecticut Restaurant Association commented that the addition of this term would not change the law, but, rather, would codify the majority position. See Conn. Joint Standing Committee Hearings, Insurance and Real Estate, Pt. 9, 2007 Sess., pp. 2954–55, 2961, 2963. Conversely, a representative of the Connecticut Trial Lawyers Association characterized the amendment as a significant change to the law. See id., pp. 2887–88. No legislator expressed a view as to whether either position was correct, or whether visible intoxication embodied a standard consistent with, or more stringent than, the standard in *Sanders*. The 2007 bills received favorable votes in committee but no further action was taken on them. We note that, in 2008, the passage from *Sanders* in its entirety was adopted as a model jury instruction for claims under the act. See http://www.jud.ct.gov/ji/civil/part3/3.17-1.htm (last visited September 28, 2012).

"Ordinarily, we are reluctant to draw inferences regarding legislative intent from the failure of a legislative committee to report a bill to the floor, because in most cases the reasons for that lack of action remain unexpressed and thus obscured in the [midst] of committee inactivity." (Internal quotation marks omitted.) *Dept. of Social Services* v. *Saunders*, 247 Conn. 686, 706, 724 A.2d 1093 (1999); see also *Bob Jones University* v. *United States*, 461 U.S. 574, 600, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983) ("unsuccessful attempts at legislation are not the best of guides to legislative intent" [internal quotation marks omitted]). This reluctance seems particularly apt in the present case given the lack of clarity as to the intended effect of the amendment.

[26] Under the plaintiff's construction, a purveyor would be liable if it served a patron a single drink predicated solely on the fact that the patron had a blood alcohol content of 0.08 at the time of service, even if careful observations of the patron prior to service had yielded no evidence of intoxication and the patron had falsely informed the purveyor that the patron previously had not been drinking.

[27] We note that this conclusion finds strong support in trial exhibits marked by the plaintiff for identification but ultimately not introduced as full exhibits, specifically, Pracher's charge card receipt from the bar on the evening of the accident and his deposition testimony regarding additional cash he spent on drinks, the cost of drinks and drinks others bought for him.

[28] We decline to designate any particular number of drinks as per se evidence of such impaired judgment given the numerous factors that affect individual reactions to alcohol consumption. See *Wentland* v. *American Equity Ins. Co.*, supra, 267 Conn. 604–605 ("[A]lcoholic liquor may tend to affect some persons differently than it does others, depending on a number of factors, for instance, a person's body weight, a person's tolerance to alcohol, and what other food or beverages, if any, a person has consumed within the same time frame. . . . [I]t is possible to be affected to some extent by alcoholic liquor, without being intoxicated." [Internal quotation marks omitted.]).

[29] The statement in *Sanders* describing a person "so affected in his acts or conduct that the public or parties coming in contact with him can readily see and know this is so"; *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 196 Conn. 350; is not to the contrary. Indeed, in *St. Louis, Iron Mountain & Southern Railway Co.* v. *Waters*, 105 Ark. 619, 624, 152 S.W. 137 (1912), the likely source for this statement, the Arkansas court noted: "It is a matter of common knowledge that intoxication affects men in different ways. Some men become quarrelsome when they are drunk, while others become stupefied and inactive, and *still others do not give any outward and visible signs except a pleasurable excitement*. A man may be said to be drunk whenever he is under the influence of intoxicating liquors to the extent that they affect his acts or conduct, so that persons coming in contact with him could readily see and know that the intoxicating liquors were

affecting him in that respect." (Emphasis added.) The emphasized phrase suggests a subtle manifestation is sufficient.