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Serving Alcohol
Responsibly

(Arial Narrow)



Course Evaluation

Serving Alcohol Responsibly During the Transportation Mode: A Survey of Global Standards Elizabeth DeConti, Gray Robinson

For each question, please circle the answer that comes closest to your opinion.

1-strongly disagree 2-disagree 3-neutral 4-agree 5-strongly agree

^ This program was presented in a lively, stimulating way	1	2	3	4	5
^ The content was interesting and informative	1	2	3	4	5
^ The information presented will be useful to me	1	2	3	4	5

^ **What other topics in this area should we consider for next year?**

^ **Other Comments?**

Your comments will ensure a successful program next year. Thank you.
Please place this form in the designated box located in each session.

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Ms. DeConti is a shareholder in the Tampa office and is a member of the firm's Alcohol Beverage and Food Team. Prior to joining GrayRobinson, she was a partner with the Tampa office of Holland & Knight and a judicial clerk for the Honorable Antoinette L. Dupont, Chief Judge of the Connecticut Appellate Court. She earned her B.A. *cum laude* and with Distinction in Renaissance Studies from Yale University in 1993 and then received her J.D. *cum laude* in 1996 from the University of Miami School of Law, where she was a Harvey T. Reid Scholar.

Awarded the highest rating assigned by Martindale-Hubbell Law Directory "AV", Ms. DeConti focuses her practice on litigation and compliance matters related to the rules, regulation and business practices that govern the marketing, sale, and consumption of malt beverages; wine, distilled spirits, and other regulated products in the alcohol, food and dairy industry. She is also a circuit court mediator certified by the Supreme Court of Florida.

Ms. DeConti's trial experience includes commercial, franchise, intellectual property, and ADA cases litigated on behalf of major breweries, alcohol suppliers, wholesalers, retailers, and other members of the hospitality industry in state and federal courts and administrative agencies throughout the United States. In addition to her court experience, she represents many clients in alternative dispute resolution. She also advises clients on issues pertaining to trade regulation and marketing practices in the food, beverage and dairy industry, and concentrates on regulatory compliance, as well as advertising and promotional law. Ms. DeConti also drafts contracts related to advertising, distribution, importation, and related issues associated with the food, beverage and dairy industry.

In addition, she is fluent in Italian and French, and advises European clients on international and domestic matters. Ms. DeConti's international experience has included the negotiation, sale and purchase of Italian wineries, liaising with Italian law firms on litigation matters pending in Italy and the United States, representation of several German breweries, and advising and counseling foreign entities seeking to import products from Western Europe into the United States.

Ms. DeConti is a member of The Florida Bar and The Connecticut Bar, and is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Eleventh Circuit, as well as the U.S. District Courts for the Northern, Middle, and Southern Districts of Florida. Additionally, she is a member of the American Bar Association, the Federal Bar Association, and the Hillsborough County Bar Association. She is also a frequent lecturer to the alcohol beverage and hospitality industries.

EDUCATION:

- Yale University, B.A. Renaissance Studies (cum laude with Distinction, 1993)
- University of Miami School of Law, J.D. (cum laude, 1996)
 - Harvey T. Reid Scholar

PROFESSIONAL:

- The Florida Bar
- The Connecticut Bar
- Certified Circuit Court Mediator
- American Bar Association
- Federal Bar Association
- Hillsborough County Bar Association
- Selected as top attorney by *Super Lawyers 2006*

COURT ADMISSIONS:

- Florida (1996)
- Connecticut (1997)
- United States District Courts for the Middle, Northern and Southern Districts of Florida
- United States Court of Appeals for the Eleventh Circuit
- United States Supreme Court

PUBLICATIONS:

- *Food and Beverage Liability Update* – Thursday, February 2, 2006
- *Beverage Marketing* - Tuesday, January 11, 2005
- *Ingredients of a Food Related Lawsuit* - Tuesday, January 4, 2005
- *An Introduction to Food Liability* - Wednesday, December 1, 2004
- *Liability Arising From Service of Alcohol Beverages to Minors and How to Avoid It* - Thursday, October 7, 2004
- *What is Dram Shop Liability?* - Tuesday, August 3, 2004
- *Food & Beverage Liability Issues* - Monday, June 21, 2004
- *Beer, Bad Oysters, and Other Pitfalls: A Food and Beverage Liability Update* - Thursday, January 22, 2004
- *Emerging Trends in Dram Shop Liability Law* - Friday, January 24, 2003
- *Michigan Liquor Control Commission Issues Bulletin Restricting Combination Package Of Wine* - Wednesday, November 22, 2000
- *Iowa Undergoes Review Of Alcohol Rules And Regulations* - Thursday, June 1, 2000
- *Wineries Win First Round In Attack On Illinois' New Wine and Spirit Franchise Law* - Wednesday, March 1, 2000
- *Automobile Forfeiture Laws Crack Down on Drunk Drivers* - Sunday, December 19, 1999

CIVIC:

- American Cancer Society, Greater Tampa – Member, Operating Board (2002 – 2006)
- American Heart Association of Tampa Bay – Board of Directors (1999 – Present)
- Yale Club of Tampa Bay – Director (2001 – Present)
- Tampa Hope Lodge – Member, Capital Campaign Committee (2001 – 2002)
- Sacred Heart Church - Parishioner

LANGUAGES:

- Italian
- French

Serving Alcohol Responsibly During the Travel Mode: A Survey of Global Standards

Presented by:
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Global Congress on Travel
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How are the Transportation and Leisure Industries
Challenged?

Compliance

- Unique Venues/ Physical Structures
- Many Employees to Train
- Itinerant Guests

Legal

- Jurisdictional Issues
- What law applies?



Focus on Air Travel and Cruising

Airline Cases

- Balance between federal and state legislation on alcohol service/liability
- Licensing and training requirements for airlines vs. traditional licensed establishments

Cruise line Cases

- Intersection between federal and maritime law, state tort and criminal law, and international law
- Which body of law applies?
- Choice of law and/or remedies may be an issue.





US Airways, Inc. v. O'Donnell
627 F.3d 1318 (10th Cir. 2010)

Federal Aviation Act preempts state law on alcohol service, but Twenty-first Amendment requires balancing of core powers of state and federal interests.

- **Facts:** Following a car accident caused by an intoxicated airline passenger, among other state liquor law violations, state regulators filed a cease-and-desist order instructing airline to refrain from serving alcohol in the state of New Mexico without the proper license. After airline applied for the public service license the state regulators declined to issue the license at which point the airline filed this action claiming that that FAA preempts the New Mexico Liquor Control Act.
- "Based on the FAA's purpose to centralize aviation regulation and the comprehensive regulatory scheme promulgated pursuant to the FAA, we conclude that federal regulation occupies the field of aviation safety to the exclusion of state regulations."
- "Thus, even though NMLCA represents the exercise of a core state power pursuant to the Twenty-First Amendment, a balancing of state and federal interests must be conducted."

Elizabeth DeSantis

Gonzales v. Ever-Ready Oil, Inc.,
636 F. Supp. 2d.1187 (D.N.M. 2008)



Federal Aviation law proposes the standards of care in certain kinds of cases, but does not preempt state law dram shop act.

- **Facts:** Family of deceased filed action against estate of intoxicated driver and airline who over-served the intoxicated driver during a flight. The defendants attempt to remove the case to federal court on the grounds of federal question jurisdiction by arguing that federal law sets the standards of care rather than state dram shop act.
- "Even if federal law exclusively defines the standard of care to be applied in this suit, resolution of Plaintiffs' claims will turn on the application of that law to fact."
- "Plaintiffs' claim does not involve a pure issue of federal law or even a dispute about the meaning of federal law. It is certainly about the application of a mixture of federal and state law to fact."

Elizabeth DeSantis



Delta Airlines, Inc. v. Townsend
614 S.E. 2d 745 (Ga. 2005)

State dram shop act does not apply to airlines due to the indefinite nature of passengers' transportation plans after departure from the airplane.

- **Facts:** Injured driver brought dram shop action against airline for over-serving a passenger who subsequently crashed into the plaintiff. The court analyzed whether the state's dram shop act applied to airlines when they over-serve passengers who later caused injuries.
- "Therefore the clear intent of the General Assembly is to impose civil liability only on that limited class of suppliers of alcohol who had reason to know that the customer will be driving a vehicle shortly after being served."
- "The proximate connection between the consumption of alcohol by an airline passenger during a flight and his subsequent act of drunk driving is much more remote and attenuated."

Elizabeth DeSantis

Trinidad v. American Airlines, Inc.,
92 F. Supp. 521 (S.D.N.Y. 1996)



Federal aviation safety regulations do not preempt state law negligence claims.

- **Facts:** Airplane passenger files personal injury action against airline for alleged negligence during unexpected turbulence. Airline argues that claims are expressly and impliedly preempted by the Airline Deregulation Act and the Federal Aviation Act, but court holds that there is no federal preemption so state common law governs the personal injury claim.
- “[P]ersonal injury lawsuits invoking ‘traditional elements of tort law’ are not preempted by federal law.”
- “[T]he Twenty-First Amendment does not grant the State power to regulate the sale of alcohol out of State or in an area under exclusive Federal Control’ [because] [f]ederal law exclusively governs the operation, control and safety of air carriers.”

Elizabeth DeSantis

Montalvo v. Spirit Airlines,
508 F.3d 464 (9th Cir. 2007)

The FAA preempts state tort law standards of care in duty to warn cases

Facts: Passengers alleged that airlines negligently failed to warn them about the dangers of developing deep vein thrombosis (DVT) and for providing unsafe seating configurations on domestic flights.

“Because the FAA preempts the entire field of aviation safety . . . the Airlines are under no obligation to warn of the risk of developing DVT, absent a federal mandate to do so.



Elizabeth DeSantis

Twardowski v. American Airlines, Inc.,
535 F.3d 952 (9th Cir. 2008)

Failure to warn of the risk of DVT is not required under the Warsaw Convention because developing a DVT is not an “accident”

- **Facts:** Passengers and their decedents sued various airlines alleging that they sustained injuries from developing DVTs during long international flights because the airlines failed to warn them of the risks and preventive measures.
- The U.S. is a party to the Warsaw Convention, which governs airline liability pertaining to injuries sustained during international air travel. Under Article 17, “[t]he carrier shall be liable for damages . . . if the accident which caused the damage so sustained took place on board the aircraft. . . .”
- The U.S. Supreme Court defines a Warsaw “accident” as an “unexpected or unusual event or happening that is external to the passenger.” However, developing a DVT is not an accident because it is an internal response to the normal operation of the flight.

Elizabeth DeSantis

Wallace v. Korean Air,
214 F.3d 293 (2d Cir. 2003)

Airlines can be liable for passenger-on-passenger assaults

- **Facts:** Passenger was sexually assaulted by an intoxicated passenger, and alleged that the airline was liable because the injury constituted an "accident" under the Warsaw Convention.

The court, noting the flexibility allowed in defining a Warsaw "accident," was "satisfied that [Defendant's] assault on [Plaintiff] was... 'an unexpected or unusual event or happening that [was] external to the passenger.'"

Elizabeth DeSantis

Scala v. American Airlines,
249 F. Supp. 2d 176 (D. Conn. 2003)



Flight attendant who mistakenly served alcohol to passenger caused an "accident" under the Warsaw Convention

Facts: Passenger with a pre-existing heart condition ordered cranberry juice on an international flight, and was accidentally served cranberry juice with alcohol. Plaintiff consumed the drink, and alleged that he suffered a physical injury to his heart as a result.

"The substitution of an alcoholic beverage for the non-alcoholic beverage [Plaintiff] ordered was also 'external' to [Plaintiff] in the sense that it was a mix-up presumably done by the flight attendant. While [Plaintiff's] physical reaction to the event was obviously wholly internal, the accident was the drink substitution, not the heart ailment."

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Langadinos v. American Airlines, Inc.,
199 F.3d 68 (1st Cir. 2000)



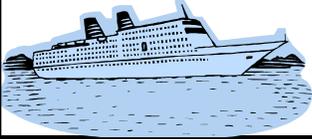
Serving alcohol to an intoxicated passenger may create a foreseeable risk that the passenger will cause an "accident" under the Warsaw Convention

- **Facts:** Passenger alleged that airline violated Warsaw Convention by continuing to serve alcohol to an intoxicated passenger who then assaulted him.
- "The Supreme Court's definition of 'accident' is broad enough to permit recovery from torts committed by fellow passengers."
- "[C]ourts have found Warsaw accidents where airline personnel play a causal role in a passenger-on-passenger tort."

Elizabeth DeSantis

Unique characteristics of the Cruise Industry

"The legal problems posed by ships that travel the seven seas (not to mention innumerable freshwater bodies) are unique, and the law of admiralty, in response, is a unique (some would say peculiar) field of law. So too are the sources of admiralty law." 1 Admiralty & Mar. Law § 4-1 (5th ed.)



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"Splice the mainbrace"¹: A Brief History of Alcohol Use on the High Seas

- "Ships in the 17th century were not equipped with the technology to store fresh water for long, and it could easily grow bacteria, so on long voyages sailors took large stocks of rum, beer and wine, earning rum its sea-dog reputation." <http://www.themoscowtimes.com/guides/bar/eng/drinks/rum.html#ixzz1SfZplf31>
- "In 1655, when the British fleet captured the island of Jamaica, rum became the official drink of the Royal Navy. Subsequently, to reduce the influence of alcohol on the sailors, commanders ordered the rum to be diluted before use. Thus, a mixture of rum with water became known as grog. Rum was part of sailors' daily diet until the abolition of this rule in 1970." <http://www.themoscowtimes.com/guides/bar/eng/drinks/rum.html#ixzz1SfZplf31>
- On March 27, 1794, the daily ration established by Congress for the Navy included "one half-pint of distilled spirits," "or in lieu thereof, one quart of beer." <http://www.history.navy.mil/faqs/faq92-1.htm>
- The term "groggy", meaning dazed, weak, or unsteady, especially from intoxication, originated in 1740, when British Admiral Vernon ordered that the sailors' daily ration of rum be diluted with water. The men called the mixture "grog". A sailor who drank too much grog was "groggy".

¹ Splice the mainbrace is an order given aboard ships to issue the crew an extra drink. Originally an order for one of the most difficult emergency repair jobs aboard a sailing ship, it became a euphemism for authorized celebratory drinking afterward, and then the name of an order to grant the crew an extra ration of rum or grog.

Elizabeth DeSantis

Special legal issues facing the cruise industry

- Intersection between federal maritime law, state tort and criminal law, and international law
- Which body of law applies?
- Choice of law and/or remedies may be an issue



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Compliance Issues Reflected in Cruise Ship Liability

- Need for risk management for employees
- Role of a responsible alcohol policy
- Crisis/incident response



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Statistics

- www.cruisejunkie.com compiles incident statistics on cruise ships, including *The Comprehensive List of Persons Overboard*
 - In 2011, 13 persons went overboard
 - In 2006, 22 persons went overboard, so with 12 million cruisers, your chance of going overboard was 1 in 545,454

Elizabeth DeSantis

Examples of Liability Exposure for Cruise Lines

- Alcohol Service Issue May be Involved in any of these fact patterns
 - Cruise ship brawls
 - 2 or 3 guards must protect 2,000 passengers
 - Overconsumption at "pub crawls"
 - Other premises liability
 - Sexual assault and battery against intoxicated passengers

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- Liability Exposure May Lead to Several Causes of Action:
 - general premises liability
 - assault and battery
 - (intoxicated passengers + dance clubs)
 - sexual assault and battery
 - negligent hiring, supervision, retention etc.
 - bartenders serving passengers who are already “three sheets to the wind”
 - dram shop liability
 - Note: the cruise line is vicariously (strictly) liable for torts (even intentional torts) of their employees, so when crew members are negligent the cruise line is responsible

Elizabeth DeSantis

Admiralty and Maritime Jurisdiction & Choice of Law: A Primer

- “Any attempt to articulate a cogent explanation of the relationship between federal maritime law and state substantive law is a daunting task, at best.” *Horvak v. Argosy Gaming, Co.*, 648 N.W.2d 137, 142 (Iowa 2002)



Elizabeth DeSantis



Horak v. Argosy Gaming Co.,
648 N.W.2d 137 (Iowa 2002)

Intersection between federal maritime law and state dram shop act

- **Facts:** Children of a patron sued riverboat casino on grounds that the casino violated Iowa’s dram shop act, that casino’s employees repeatedly served to patron whose inebriated state they knew or reasonably should have know about, and that these actions were cause of subsequent crash that killed patron. Issues arose whether federal maritime law was applicable, and whether or not state dram shop law could be applied concurrently with federal law
- There is no federal maritime dram shop law, but “where there is a gap in federal maritime law, state law may apply its own law where not inconsistent with federal maritime law”

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Admiralty and Maritime Law Jurisdiction

- The Grubert Test for Admiralty Jurisdiction: SITUS and NEXUS
 - SITUS (location inquiry): the incident must occur on navigable water (but see Doe v. Celebrity Cruises, Inc., 394 F.3d 891, 901 (2004) (jurisdiction has been expanded to cover incidents occurring at ports-of-call))
 - NEXUS (connection inquiry): the incident must have “a potentially disruptive impact on maritime commerce” and must show a “substantial relationship to traditional maritime activity” Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995)

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Federalism and Preemption

- “The district courts shall have original jurisdiction, exclusive of the courts of the States, of . . . [a]ny civil case of admiralty or maritime jurisdiction, *saving to suitors in all cases all other remedies to which they are otherwise entitled.*” 28 U.S.C.A. § 1333(1) (West) (emphasis added)
 - “This ‘saving to suitors’ clause effectively grants state courts concurrent jurisdiction in cases grounded in admiralty law.” Horak v. Argosy Gaming, Co., 648 N.W.2d 137, 143 (Iowa 2002)
 - If there is a gap in federal maritime law, courts may apply state law that is not inconsistent with federal maritime law

Elizabeth DeSantis



Doe v. Celebrity Cruises, Inc.,
394 F.3d 981 (11th Cir. 2004)

Maritime jurisdiction extends to govern torts committed at a port-of-call

- **Facts:** Plaintiff sued ship operator, owner, caterer and caterer’s service company for damages arising from alleged sexual assault by a crew member at a port-of-call during a cruise. Issues arose as to whether a state law or federal maritime law standard of care governs when a crew member sexually batters a passenger.
- Federal maritime law was applied because there was *location* and *connection* with maritime activity: “As the cruise line industry is maritime commerce, a crew member’s sexual assault on a passenger obviously has a potentially disruptive impact on maritime commerce.”
- “[U]nder federal maritime law, a cruise line is strictly liable for crew member assaults on passengers during the cruise.”

Elizabeth DeSantis

Stires v Carnival Corp.,
243 F.Supp.2d 1313 (M.D. Fla. 2002)

Common carriers owe a duty of "reasonable care under circumstances"

- **Facts:** Plaintiff sued cruise line alleging that cruise line negligently investigated, hired, retained, supervised, and managed its crewmembers which allowed crew members to sexually assault and batter passenger. Issue is what standard of care the cruise ship owes towards its passengers.
- "As discussed in *Doe v. Celebrity Cruises...* a common carrier, such as a cruise line, is vicariously liable for the intentional torts of its employees. . . . However, to state a claim of negligence against a cruise ship owner a plaintiff must allege that the defendant failed to exercise "reasonable care under the circumstances."
- "Negligent hiring occurs when, prior to the time the employee is actually hired, the employer knew or should have known of the employee's unfitness, and the issue of liability primarily focuses upon the adequacy of the employer's pre-employment investigation into the employee's background."

Elizabeth DeSantis



Belik v. Carlson Travel
Grp., Inc., 2011 WL 2221224
(S.D. Fla. June 6, 2011)

Cruise line may owe duty to warn passengers of dangerous conditions at port-of-call excursions.

- **Facts:** Plaintiff sued travel company and cruise line for negligently failing to warn of dangerous conditions of consuming alcohol and diving off a seawall during a port-of-call excursion. Plaintiff participated in an excursion that encouraged excessive drinking and jumping into the ocean, but when he dove in, he sustained permanent, debilitating and serious injuries.
- Plaintiff alleges that defendants encouraged excessive drinking and, despite being aware of the passenger's intoxication, failed to offer warnings or barriers. He alleges he was encouraged to jump off the seal wall so it wasn't unreasonable to assume that the water was deep enough to dive safely
- "The Court cannot say as a matter of law that the danger was so open and obvious as to obviate [Defendant's] duty to warn."

Elizabeth DeSantis



How Does This Happen?
The Physical Structure and Operation of
a Cruise Ship Create Vulnerability

- Combination of
 - Floating resort hotels (large square footage with thousands of passengers)
 - Adventure on the high seas (2000 people surrounded by water, watch out for "man overboard")
 - All inclusive alcohol plans (a "yo-ho-ho and [an unlimited quantity of] rum" package incentivizes excessive drinking/overconsumption)
 - Alcohol served at several points-of-sale " (need for a 21st century "crows nest" to supervise and monitor consumption)
 - Travel to several different countries (jurisdiction issues with different ports of call)

Elizabeth DeSantis

“Dutch courage”¹ Gone Wrong

- “Set a course for adventure, your mind on a new romance.”²
 - Be careful about your policies regarding crew member fraternization with passengers on and off the ship

¹ False courage induced by alcohol; alcoholic drink. English propaganda during the Anglo-Dutch wars of the 17th century claimed that Dutch sailors and other troops were cowards and would only fight when drunk on schnapps.

² Theme Song from the 1990s television show “The Love Boat”

Elizabeth DeBonte

Congress Intervenes: The CVSSA

- Video Recording and Surveillance + Crime Scene Preservation Training
 - New evidentiary issues and proof standards (will this increase or decrease cases?), this effects pre-trial discovery ...
- Sexual Assault
 - Medication to prevent STD's
 - Equipment and material for performing medical examination (rape kits)
 - Credentialing process for doctors (forensic sexual assault examination and administration of medications)
 - Documentation of findings
 - Passenger has free and immediate access to contact law enforcement
 - Crew Access to Staterooms Restrictions

Elizabeth DeBonte

New Compliance Issues: Developing a Responsible Alcohol Service Policy in Light of CVSSA

- CVSSA creates a business need for more detailed alcohol policies even though legislation is not directed at alcohol service
- Policies should address:
 - minors and the obviously intoxicated
 - tracking sales and times
 - employee access to alcohol
 - employee access to passengers

AND MORE.

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Questions
???

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