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AM I MY BROTHER'S KEEPER? SOCIAL HOST LIABILITY UNDER DRAMSHOP ACTS AND COMMON LAW NEGLIGENCE

I. INTRODUCTION

Drunk driving is a problem of national concern. In recent years,

almost two-thirds of all fatal car accidents involved drunk drivers. Judicial, legislative, and public response to the problem varies. One legislative response is the enactment of dramshop acts. Dramshop acts hold vendors liable for serving alcoholic beverages to intoxicated customers who subsequently injure a third party. A more recent judicial and legislative response is the development of social host liability. This cause of action imposes criminal and civil liability on a social host for serving alcohol to an intoxicated guest at a social gathering if the

2. U.S. PRESIDENTIAL COMM’N ON DRUNK DRIVING—INTERIM REPORT 1 (1983) [hereinafter INTERIM REPORT]. Drunk driving played a role in 65% of the 42,000 fatal car accidents in 1983. Between one in 500 and one in 2,000 drivers on the road who are legally intoxicated are arrested for drunk driving. Id.

3. NATIONAL TRANSPORTATION SAFETY BOARD, supra note 1, at 2. Heavy problem drinkers who regularly abuse alcohol cause a majority of alcohol related deaths. INTERIM REPORT, supra note 2.

4. See supra note 1 (various congressional solutions to the drunk driving concern). A number of interest groups have formed to help reduce drunk driving, such as Mothers Against Drunk Driving (MADD) and Students Against Drunk Driving (SADD). Special Project, Social Host Liability for the Negligent Acts of Intoxicated Guests, 70 CORNELL L. REV. 1058, 1059 (1985). For a discussion of MADD’s role in litigation, see Comment, MADD at the Court, 22, 23 JUDGES J. 36 (1984). For an examination of the constitutionality of drunk driver roadblocks, see Comment, The Constitutionality of Drunk Driver Roadblocks in Oklahoma, 20 TULSA L. REV. 286 (1984).

5. Social host liability arises when a social host furnishes alcoholic beverages to an obviously intoxicated person under circumstances creating a reasonably foreseeable risk of harm to others. The social host may be held legally accountable to those third persons who are injured when that harm occurs. Coulter v. Superior Court of San Mateo County, 21 Cal. 3d 144, 150, 577 P.2d 669, 672, 145 Cal. Rptr. 534, 537 (Cal. 1978). See infra notes 133-45 and accompanying text. For a background discussion of social host liability, see Gutman, Drinking, Driving and the Social Host, CASE & COMMENT 3 (Nov.-Dec. 1985). Courts primarily use common law negligence principles to determine social host liability. See infra notes 116-64 and accompanying text.

6. State legislatures developed dramshop acts that prohibit the selling or furnishing of alcohol to intoxicated persons. A typical dramshop act reads: “No person shall sell, dispense, or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor or beer.” IOWA CODE § 123.49(1) (1983). See infra notes 23-67 and accompanying text (discusses vendor and social host liability under dramshop acts).
guest subsequently injures a third party. Social host liability developed as an extension of both state dramshop statutes and common law negligence principles.

This Note examines a commercial vendor's and a social host's statutory and common law liability for serving alcohol to intoxicated persons. Part II of this Note discusses the history of vendor and social host liability under dramshop acts and common law negligence principles. Section A of Part II focuses on commercial vendor and social host liability under dramshop statutes and analyzes the problems of social host liability under dramshop acts. Section B examines commercial vendor and social host liability under common law negligence principles. The problems associated with extending common law negligence principles to create social host liability are evaluated in the conclusion of this section. Part III analyzes the impact of social host liability both on society and the particular individuals involved. The Note's conclusion proposes alternative solutions that effectively address and remedy liability problems arising from drunk driving accidents.

II. HISTORY

Traditionally, the common law held that any person who sold or served alcoholic beverages to someone who subsequently injured a

8. See infra notes 176-77 and accompanying text.
9. See infra notes 23-77 and accompanying text.
10. See infra notes 68-77 and accompanying text.
11. See infra notes 78-177 and accompanying text.
12. See infra notes 165-77 and accompanying text.
13. See infra notes 178-91 and accompanying text.
14. See supra note 1 (legislative solutions to the drunk driving problem).
15. See infra notes 189-91 and accompanying text.
third party was immune from liability. The rationale behind this theory was that the consumption of alcohol, not the selling or serving of alcohol, was the proximate cause of the injury. Courts believed that the alcohol drinker was responsible for alcohol related accidents. Yet, during the past twenty-five years, in response to the drunk driving problem, legislatures have enacted dramshop acts that prohibit the sale of alcohol to intoxicated persons. As a result, a growing number of courts have rejected the common law vendor immunity theory. Thus, under dramshop acts and through extensions of common law negligence principles, commercial alcohol vendors may be held liable for injuries to a third party that occur subsequent to the vendor's sale of alcohol to an intoxicated person.


17. Proximate cause establishes legal responsibility for an injury. W. Keeton, Prosser & Keeton on Torts 273 (5th ed. 1984). The test for proximate cause is whether the defendant's act was a substantial factor in producing the injury. Id. at 278.

18. Note, supra note 16, at 1143. For a discussion of the traditional theory of proximate cause, see Note, Kelly v. Gwinnell: Imposing Third Party Liability on Social Hosts, 5 Pace L. Rev. 809, 811 (1985) (discusses shift in proximate cause theories); see also Rappaport v. Nichols, 31 N.J. 188, 194-200, 156 A.2d 1, 4-5 (1959) (examines the proximate cause of drunk driving injuries). The rationale behind the traditional theory was that intoxication is not an excuse for crime or tortious behavior. State ex rel. Joyce v. Hatfield, 19 Md. at 251, 78 A.2d at 756 (tavern owner not liable for serving intoxicated patron who later injured plaintiff in a car accident).


20. See supra note 5 (typical dramshop statute).

21. Special Project, supra note 4, at 1086.

22. Id. For a discussion of the standard of conduct required of a vendor, see Comment, supra note 19, at 877 (liability under common law negligence principles based on a reasonable person's ability to foresee a guest's drunk driving); Special Project, supra note 4, at 1086 (courts hold that the reasonable person who sells or serves liquor to a person does not foresee that his or her guest will drive while under the influence of alcohol).

For several examples of courts imposing liability on vendors, see Nazareno v. Urie, 638 P.2d 671 (Alaska 1981) (bar owners liable for third party's injuries from intoxicated patron's collision with the third party on the dance floor); Ontiveros v. Borak, 136 Ariz. 500, 638 P.2d 671 (1983) (en banc) (tavern owner liable for injuries when he served intoxicated patron who was later involved in a car accident); Taylor v. Ruiz, 394 A.2d 765 (Del. Super. Ct. 1978) (liability can be imposed on a tavern owner who serves alcohol...
A. Dramshop Acts

1. Commercial Vendor and Tavern Owner Liability Under Dramshop Acts

Because commercial vendors and tavern owners traditionally were immune from liability under the common law, an injured party had no remedy against a negligent licensee. To rectify this problem, courts developed an exception to the common law rule, recognizing the special relationship that liquor licensees have with their customers. This special relationship creates a duty of care that is owed to the customers. This duty arises from an implied service contract between licensee and customer, which allows the licensee to receive economic benefit from the sale of alcohol. Despite this exception, only a few courts recognized a duty of care that flowed from the licensee-customer relationship and runs to third persons injured by intoxicated customers. Consequently, state legislatures enacted dramshop acts.

The purpose of dramshop acts is to protect the general public from the injurious consequences of contact with an intoxicated person. Dramshop acts provide a cause of action for third parties injured by

23. Note, supra note 18, at 811 (discusses the development of liability for negligent tavern owners and vendors). See also supra notes 16-19 and accompanying text (discusses vendor immunity).

24. Note, supra note 18, at 812. For the purposes of this Note, a licensee includes both a commercial vendor and tavern owner.

25. A duty is defined as an obligation to conform to a particular standard toward another. W. KEETON, supra note 17, at 356. Duty is a question of whether the defendant is under any obligation for a particular plaintiff's benefit. Id. In negligence cases, the duty is to conform to the legal standard of reasonable conduct examined in light of the situation's apparent risk. Id.


27. Note, supra note 18, at 812-13 (thorough discussion of the reasoning behind imposing a duty on vendors).

28. Most jurisdictions adhered to the traditional vendor immunity theory. Id. at 813.

29. Id. Dramshop acts are also referred to as civil damages acts. Id. See supra note 5 (typical dramshop act).

intoxicated patrons against liquor licensees. To further their goal of protection, dramshop acts do not require a showing of negligence. The statutes base recovery instead on strict liability. To establish a prima facie case, the plaintiff must prove four elements: (1) the defendant transferred an intoxicating liquor to the patron, (2) the patron consumed the liquor and became intoxicated, (3) the intoxicated patron injured the plaintiff, and (4) the patron's intoxication caused the plaintiff's injury. Proving these elements entitles the plaintiff to recover for such injuries from a vendor or tavern owner who served alcohol to the intoxicated patron.

2. Extending Liability to Social Hosts Under Dramshop Acts

A majority of courts and legislatures are reluctant to extend liability to social hosts under dramshop acts. Even if a dramshop act is arguably broad enough to include social hosts, courts usually limit the

31. Note, supra note 18, at 813.
32. Comment, Social Host Liability: No More “One For the Road,” 61 CHI.-KENT L. REV. 165, 166 (1985). Strict liability means liability imposed on an actor apart from either an intent to interfere with a legally protected interest or a breach of duty to exercise reasonable care. W. KEETON, supra note 17, at 534. This concept is often referred to as liability without fault. Id.
33. A prima facie case is one that proceeds upon sufficient proof to that stage at which it will support a finding if evidence to the contrary is disregarded. BLACK'S LAW DICTIONARY 1071 (5th ed. 1979).
34. Note, Dram Shop Litigation, 12 AM. JUR. 2D Trials 729, 738 (1966). The specific elements required under a typical dramshop act are:
   (1) an intoxicating liquor is involved,
   (2) defendant must transfer the liquor,
   (3) transferee must consume the liquor,
   (4) transferee must become intoxicated or the drink must contribute to his existing state of intoxication,
   (5) the intoxicated transferee must cause actual injury to the plaintiff,
   (6) the intoxication must have a causal connection to the plaintiff's injury, and
   (7) the plaintiff must be entitled to sue under the dramshop act.
Id. See Gabrielle v. Craft, 75 A.D.2d 939, 428 N.Y.S.2d 84 (1980) (lack of sale is fatal to action under dramshop act).
35. Note, supra note 34, at 738.
36. Id.
37. Id.
38. Id.
40. Some state dramshop acts are broad enough to include social hosts. See, e.g.,
statute’s application to vendors, claiming that legislatures did not intend to include social hosts in dramshop acts.

_Kohler v. Wray_ typifies the traditional reluctance to extend dramshop act coverage to include social hosts. The Supreme Court of New York found that the New York dramshop act does not apply to a social host. In _Kohler_ the defendant held a party and served several kegs of beer. One guest became intoxicated, a fight ensued, and the intoxicated guest exchanged punches with the plaintiff. The majority held that a social host is not liable for injuries that result from serving alcohol to an intoxicated guest. The court found that neither the dramshop act nor the common law recognizes a cause of action against a social host based merely on the serving of alcohol to an individual who later injures a third party. Rather, the court stated that such a cause

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42. _See_ Cady v. Coleman, 315 N.W.2d 593 (Minn. 1982) (legislature did not intend to include social hosts under dramshop acts); Gabrielle v. Craft, 75 A.2d 939, 428 N.Y.S.2d 84 (N.Y. App. Div. 1980) (sale of alcohol by defendant is required to maintain a cause of action under dramshop act). For a discussion of social host liability under dramshop acts, see Special Project, supra note 4, at 1115-20.

43. 114 Misc. 2d 856, 452 N.Y.S.2d 831 (N.Y. Sup. Ct. 1982). In _Kohler_ the plaintiff arrived at defendant’s party and was encouraged to help himself to beer. _Id._ at 856-57, 452 N.Y.S.2d at 832. The plaintiff approached a married woman and asked her to dance. _Id._ at 857, 452 N.Y.S.2d at 833. A fight between plaintiff and the woman’s husband then occurred. _Id._

44. _Id._ at 856, 452 N.Y.S.2d at 832.

45. _Id._

46. _Id._ at 857, 452 N.Y.S.2d at 838.

47. _Id._ The court found that the plaintiff offered nothing to rebut defendant’s proof that the host had no notice or opportunity to prevent the assault. _Id._ at 861, 452 N.Y.S.2d at 835.

48. _See infra_ notes 116-64 and accompanying text (social host liability under common law negligence principles).

49. _Kohler_, 114 Misc. 2d at 857, 452 N.Y.S.2d at 838.
of action applies only to licensees who sell alcohol to the intoxicated individual.\textsuperscript{50}

Until recently, no jurisdiction allowed recovery against a social host under a dramshop act.\textsuperscript{51} Iowa and Indiana departed from this view and now hold social hosts liable under dramshop acts for serving intoxicated guests.\textsuperscript{52} In \textit{Clark v. Mincks}\textsuperscript{53} defendants hosted a cookout and served beer.\textsuperscript{54} One guest became intoxicated and subsequently attempted to drive.\textsuperscript{55} The guest had an accident that killed her passenger.\textsuperscript{56} The Supreme Court of Iowa found that an injured party may have a cause of action against a social host under Iowa's dramshop act.\textsuperscript{57} Under the act, the plaintiff must prove that the host knowingly made alcohol available to an intoxicated guest, the guest drank the alcohol, and the guest then drove a vehicle causing injury to a third party.\textsuperscript{58} Placing great emphasis on the strong public policy against drunk driving,\textsuperscript{59} the court held that a cause of action against the host for serving alcohol to the intoxicated guest extended to the guest's passenger.\textsuperscript{60} The court stated that any positive change in social behavior that results from the expansion of dramshop liability is beneficial.\textsuperscript{61}

Similarly, in \textit{Ashlock v. Norris}\textsuperscript{62} the Indiana Court of Appeals extended liability under its state dramshop act to include social hosts.\textsuperscript{63} In \textit{Ashlock} the plaintiff brought a wrongful death action against a de-
defendant who had purchased several drinks for a friend at a bar. The friend left the bar and drove about a mile before striking and killing a jogger. The majority reversed the circuit court’s summary judgment in favor of the plaintiff and held that a cause of action existed against the defendant under Indiana’s Dramshop Act only if the defendant knew the friend was intoxicated and would soon be driving. The court reasoned that legislative intent and sound public policy against drunk driving allowed it to extend the dramshop act to reach this form of conduct.

3. Analysis of the Scope of Dramshop Act Liability

The Iowa and Indiana courts remain a minority in their abandonment of absolute immunity for social hosts under dramshop acts. Most courts find numerous policy reasons for refusing to extend dramshop acts to social hosts. One justification is express legislative intent to confine dramshop liability to vendors. Because legislatures presume that vendors and bartenders have the expertise to determine whether a patron is intoxicated, dramshop acts do not require actual intoxication if the person knows that the other person is intoxicated.” IND. CODE § 7.1-5-7-8 (1978).

64. 475 N.E.2d at 1168. In Ashlock, Morrow went to a restaurant and lounge and consumed two mixed drinks and three shots of straight alcohol that the defendant purchased for her. Id. After observing her intoxication, defendant unsuccessfully tried to dissuade Morrow from driving.

65. Id.

66. Id. at 1170.

67. Id. at 1169. The court stated that considering the carnage on the public highways involving intoxicated drivers, the legislative intent and sound public policy is clearly to hold a social host liable. Id.

68. Not a single jurisdiction before Clark and Ashlock held a social host liable under dramshop acts. Comment, supra note 32, at 165-79.


70. Special Project, supra note 4, at 1103. For a discussion of the legislative intent issue, see Note, supra note 16, at 1184 (stresses the importance of deference to the legislature); Comment, Social Host Liability Under the Common Law: Kelly v. Gwinnel, 1985 DET. C.L. REV. 97, 108 (1985).

71. Note, supra note 18, at 836-41 (discusses the differences between vendors and social hosts). See also supra notes 34-38 and accompanying text (courts holding social hosts liable under dramshop acts do not inquire into the defendant’s knowledge that the guest was intoxicated).
knowledge\textsuperscript{72} of the guest's or patron's intoxication. Social hosts, on
the other hand, have no such expertise. For the average citizen, deter-
mining whether a person is intoxicated is extremely difficult.\textsuperscript{73} This
reasoning suggests that state legislatures do not intend to impose this
burden on inexperienced social hosts.

An additional reason for limiting the scope of dramshop act liability
to vendors is that they can spread the cost of insurance or liability
among their customers.\textsuperscript{74} Social hosts do not have this opportunity. If
social hosts cannot afford additional liability insurance, or if such in-
surance is not available, liability judgments will deplete and perhaps
exhaust their personal savings. This is implausible legislative intent.

Reacting to judicial uncertainty regarding legislative intent behind
dramshop acts, some states enacted statutes expressly excluding social
host liability.\textsuperscript{75} Other states enacted broad dramshop acts that leave
the question of social host liability open to judicial interpretation.\textsuperscript{76}
Even if legislatures intend to cover social hosts in dramshop acts, in-
cluding them does not further the acts' purpose: eliminate injuries at
the hands of intoxicated individuals.\textsuperscript{77} Social host liability merely
places blame on an innocent party and virtually eliminates the liability
of the responsible party, the drunk driver. This arbitrary blame-plac-
ing will not deter drunk driving, but will cause it to increase. Guests

\textsuperscript{72} Knowledge is the belief in the existence of a fact, which coincides with the truth.
W. Keeton, supra note 17, at 182. "It rests upon perception of the actor's surround-
ings, memory of what has gone before, and a power to correlate the two with previous
experience." \textit{Id.} Unless an actor's attention is legitimately distracted, the actor must
give his surroundings the attention that a standard reasonable person would consider
necessary under the circumstances, and he must use his sense to discover what is readily
apparent. \textit{Id.}

\textsuperscript{73} \textit{Id.} See Kelly v. Gwinnel, 190 N.J. Super. 320, 463 A.2d 387 (App. Div. 1983)
(dissent in \textit{Kelly} believes the problem with social host liability is that it places too great
a burden on an inexperienced host to recognize an intoxicated guest); rev'd, 96 N.J. 538,
476 A.2d 1219 (1984). For a discussion of \textit{Kelly}, see infra notes 146-64 and accompany-
ing text.

\textsuperscript{74} Special Project, supra note 4, at 1103.

\textsuperscript{75} See, e.g., \textsc{Alaska Stat.} § 04.21.020 (1980); \textsc{Cal. Bus. & Prof. Code} § 25602
(West Supp. 1984); \textsc{Or. Rev. Stat.} § 30.955 (1983); \textit{but see}, e.g., \textsc{Fla. Stat. Ann.}
§ 768.125 (West Supp. 1984) (statute potentially applicable to social host). For a dis-
cussion of the legislative reaction to social host liability, see Note, supra note 16, at
1136.

\textsuperscript{76} See supra notes 40, 75 and accompanying texts (list of broad and narrow dram-
shop acts).

\textsuperscript{77} See supra note 30 and accompanying text (purpose of dramshop act is to protect
the public from injuries resulting from drunk driving).
that drive are less likely to drink responsibly knowing they can share
part, if not shift all, of the liability to their host if a third party is
injured.

B. **Common Law Negligence**

1. Commercial Vendor Liability Under Common Law Negligence

   *Principles*

   Courts initially were reluctant to impose liability on vendors if the
   state had no dramshop statute. In *Holmes v. Circo* a tavern owner
   served an intoxicated patron who subsequently injured the plaintiff
   while negligently operating his car. The Supreme Court of Nebraska
   held that absent specific legislation, a tavern owner cannot be held lia-
   ble for a third party's injuries caused by an intoxicated patron to whom
   the tavern owner had served alcohol. The court stated that due to
   public policy considerations associated with the imposition of liability
   on vendors, only the legislature should make such a decision.

   Courts occasionally imposed liability on vendors in the absence of a
   dramshop act if the vendor's conduct was more culpable than mere
   negligence. In *Ewing v. Cloverleaf Bowl* plaintiff brought a wrong-
   ful death action against a vendor for willful misconduct. The vendor

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(tavern owner who sold liquor to an intoxicated person was not liable under common
law negligence in the absence of a statute).

79. 196 Neb. 496, 244 N.W.2d 65 (1976).

80. *Id.* at 497, 244 N.W.2d at 66.

81. *Id.* at 505, 244 N.W.2d at 70.

82. *Id.* The court stated that the legislature could make a thorough investigation on
the issue, hold hearings, debate the relevant policy considerations, and then draft stat-
utes to adequately meet the public's needs. *Id.* See also Henry Grady Hotel Co. v.
Sturgis, 70 Ga. App. 379, 28 S.E.2d 329 (1943) (no liability at common law for furnishing
money to intoxicated person for the purpose of purchasing liquor); Ruth v.
Benvenutti, 114 Ill. App. 3d 404, 449 N.E.2d 209 (1983) (dramshop act is the exclusive
remedy against vendors; no common law cause of action exists based on tavern keeper's
willful misconduct); Tsarnas v. Jones & Laughlin Steel Corp., 488 Pa. 513, 523, 412
A.2d 1094, 1099 (1980) (social policies are to be addressed by the legislature, not the
courts).

Rptr. 13 (1978) (vendor liability exists for willful misconduct in serving alcohol to in-
toxicated young adult).

84. *Id.*

85. The court defined willful misconduct as the "intentional doing of something . . .
served alcohol to a patron whom he knew recently turned twenty-one. The court held defendant vendor liable for willful misconduct because he was aware of the patron's lack of drinking experience, knew of the customer's continued drinking, and disregarded tavern owners' practices.

Courts have become more willing under the developing common law to impose liability on liquor licensees for negligent conduct, establishing a duty of liquor licensees to take reasonable precautions to prevent intoxicated customers from injuring third parties. Waynick v. Chicago's Last Department Store was the first case to dispense with the dramshop approach and find liability using common law negligence principles. In Waynick, defendants, an Illinois tavern owner and a liquor retailer, sold and furnished liquor to intoxicated patrons who then killed plaintiff's decedent in an automobile collision. The Seventh Circuit found the defendants liable for plaintiff's injuries under a negligence cause of action. The court focused on the concept of...
proximate cause,\textsuperscript{95} which traditionally had been defined in this context as the consumption of alcohol. Expanding the meaning of this element of negligence, the court concluded that the serving or selling of alcohol could also constitute proximate cause.\textsuperscript{96} Making vendors liable under these principles was justified, the court reasoned, in order to protect the public from injuries incurred as a result of a vendor’s sale of liquor to an intoxicated person.\textsuperscript{97}

After the Seventh Circuit’s decision in \textit{Waynick}, the New Jersey Supreme Court also examined a vendor’s liability for injuries following the service of alcohol.\textsuperscript{98} In \textit{Rappaport v. Nichols}\textsuperscript{99} four different tavern owners served alcohol to an intoxicated minor.\textsuperscript{100} The minor later caused an automobile accident that killed plaintiff’s decedent.\textsuperscript{101} The court found that in serving alcohol to an intoxicated minor, the vendor had violated the State Beverage Control Act.\textsuperscript{102} The court held further that the vendor’s actions presented a clear and foreseeable risk to the traveling public,\textsuperscript{103} warranting the imposition of liability under common law negligence principles.\textsuperscript{104} To determine which party should properly bear the duty of care under a negligence theory, the \textit{Rappaport} court used a balancing test.\textsuperscript{105} Upon weighing the risk of serving an intoxicated minor, the relationship between the minor and the vendor, and the public interest in imposing vendor liability,\textsuperscript{106} the court imposed a duty on the tavern owner to protect the public safety.\textsuperscript{107} The creation of this duty, similar to the result reached in the

\textsuperscript{95} \textit{See supra} notes 17-19 and accompanying text.

\textsuperscript{96} 269 F.2d at 326.

\textsuperscript{97} \textit{Id.}


\textsuperscript{99} \textit{Id.}

\textsuperscript{100} \textit{Id.} at 192, 156 A.2d at 3. An adult paid for Nichols’ drinks, but according to the plaintiffs, the defendants were aware of Nichol’s age and intoxication. \textit{Id.}

\textsuperscript{101} \textit{Id.}

\textsuperscript{102} The New Jersey Beverage Control Act states: “No licensee shall permit any minor to be served or consume any beverages.” \textit{N.J. STAT. ANN.} § 33:1-77 (West 1958) (the same regulation contains a provision against service to or consumption by any person actively or apparently intoxicated).

\textsuperscript{103} 31 N.J. at 201, 156 A.2d at 8.

\textsuperscript{104} \textit{Id.}

\textsuperscript{105} \textit{Id.} at 292-03, 156 A.2d at 8-9. The court stated that the balancing of conflicting interests and policy considerations is a vital process in molding and applying common law principles of negligence. \textit{Id.}

\textsuperscript{106} \textit{Id.}

\textsuperscript{107} \textit{Id.}
Seventh Circuit, effectively modifies the traditional common law theory of proximate cause. Under this new theory, furnishing alcohol to an intoxicated minor constitutes the proximate cause of any resulting injury inflicted on a third party.

A majority of jurisdictions do not limit liability to the serving of alcohol to minors and now extend liability to vendors under common law negligence principles for serving any intoxicated person. In Ontiveros v. Borak the Supreme Court of Arizona abolished the common law vendor immunity doctrine and held a tavern owner liable for third party injuries sustained after the owner had served alcohol to an intoxicated person. The court found that a tavern owner owes a duty to exercise reasonable care to protect all individuals whom tavern owner's patrons may injure. According to the court, the duty arises because a reasonable man would recognize that serving alcohol to an

108. See supra notes 17-19 and accompanying text (discusses traditional theory of proximate cause).

109. Rappaport, 31 N.J. at 203-04, 156 A.2d at 9. For further discussion of Rappaport and its effect on New Jersey and other jurisdictions, see Note, supra note 90, at 411-12 (Rappaport began the New Jersey trend toward imposing vendor and social host liability); Note, supra note 18, at 815-23 (explains each element of negligence required under Rappaport). For a discussion of the evolution of the new proximate cause theory, see Note, supra note 18, at 823; Comment, supra note 32, at 173. (in jurisdictions recognizing a common law tort action against the supplier, furnishing alcohol is considered the proximate cause of an injury).

110. Comment, supra note 88, at 390 (discusses the present state of the law regarding common law liability of commercial vendors). For examples of courts imposing liability under common law negligence principles, see Nazareno v. Urie, 638 P.2d 671 (Alaska 1981) (bartender owes a duty to act with reasonable care when dispensing alcohol); Ono v. Appelgate, 612 P.2d 533 (Haw. 1980) (absent a dramshop act, an injured plaintiff can recover from a tavern owner who served alcohol to an intoxicated person); Jardine v. Upper Darby Lodge No. 1973, 413 Pa. 626, 198 A.2d 550 (1964) (tavern owner's service of alcohol to an intoxicated patron was the proximate cause of pedestrian plaintiff's injuries).


112. Id. at 513, 667 P.2d at 213. The tavern owner sold 30 beers to the patron throughout the afternoon and evening. Id. at 503, 667 P.2d at 203. The patron left the bar and was involved in a car accident, injuring the plaintiff. Id. The police officer gave the patron a breathalyzer test, which had a reading of 0.33%, considerably greater than the reading required for legal intoxication. Id.

113. Id. at 511, 667 P.2d at 211.
intoxicated person creates an unreasonable risk of harm to others.114 Ontiveros typifies the law in most jurisdictions—a vendor is liable for serving alcohol to a visibly intoxicated customer who later drives while intoxicated and injures a third party.115

2. Extending Liability to Social Hosts under Common Law Negligence Principles

Until recently, courts consistently refused to hold social hosts liable under common law negligence principles.116 In Chastain v. Litton Systems117 the defendant held a Christmas party and gratuitously served alcohol to its employees.118 One employee became intoxicated; later he drove a vehicle and collided with another car, fatally injuring a woman.119 The Fourth Circuit held that it would not impose liability because the defendant was a social host.120 The majority relied on North Carolina common law, which precludes social host liability.121

Other courts, however, apply common law negligence principles to impose liability on social hosts.122 Some of these courts hold that be-

114. Id. at 508, 667 P.2d at 208.
118. Id. at 959.
119. Id.
120. Id. at 960. The court stated that if Litton was not a social host, the North Carolina law of torts should determine liability. Id.
121. Id. See also Klein v. Raysinger, 504 Pa. 141, 470 A.2d 507 (1983) (social host who serves alcoholic beverages to adult guests is not liable under common law negligence principles for injuries and damages sustained as a result of a subsequent car collision involving the intoxicated guest). For a discussion of social host immunity under Raysinger, see Note, supra note 7, at 1121.
122. See Coulter v. Superior Court of San Mateo County, 21 Cal. 3d 144, 577 P.2d 669, 145 Cal. Rptr. 534 (1978) (court imposed liability on social host apartment manager who served liquor to an intoxicated guest who then was involved in a one car accident, in which the plaintiff passenger was injured); infra notes 133-45 and accompanying text (discusses Coulter); see also Kelly v. Gwinnel, 190 N.J. Super. 320, 463 A.2d 387 (1983) (social host liable for serving friend alcohol; friend drove home and caused a car accident, injuring plaintiff), rev'd, 96 N.J. 538, 476 A.2d 1219 (1984); infra notes 146-64 and accompanying text (discusses Kelly); Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity, 258 Or. 632, 485 P.2d 18 (1971) (fraternity liable as social host for allowing members to serve an intoxicated minor who injured the plaintiff while driving home); infra notes 126-31 and accompanying text (discusses Wiener). But see
cause the dramshop statutes provide for but do not fully implement common law liability, the law in this area is a proper subject for judicial reform. Consequently, these courts attempt to effectuate these principles by extending common law negligence to cover social hosts. They have had limited lasting success, however, in eroding the traditional common law rule.

The first case to hold a social host liable under ordinary negligence principles was *Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*. In *Wiener* college fraternity members served beer to an intoxicated minor. While driving home, the minor injured the plaintiff. The court recognized a cause of action against the fraternity under ordinary negligence principles, holding that the fraternity had a duty to not serve alcohol to a visibly intoxicated guest. Recognizing the novelty and possible future impact of its decision, the court stated that social host liability should be determined on a case-by-case basis. For this reason, the court expressly limited its holding to social hosts who serve alcohol to an obviously intoxicated minor.

The California Supreme Court took a similar position in *Coulter v. Superior Court of San Mateo County*. In *Coulter* an apartment

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124. *Id.* The *Buchanan* court held the vendor liable under common law negligence principles for serving alcohol to an intoxicated patron who drove an automobile and killed plaintiff's decedent. *Id.* at 124.

125. The California legislature, in response to *Coulter*, enacted a statute that abrogated *Coulter's* social host liability. *See infra* note 143. The New Jersey legislature also introduced a bill that precludes social host liability by abrogating *Kelly*. *See infra* note 187.

126. 258 Or. 632, 485 P.2d 18 (1971). In *Wiener* the defendant fraternity held a party for members of the fraternity and their guests. *Id.* at 636, 485 P.2d at 20.

127. *Id.* at 637, 485 P.2d at 20.

128. *Id.*

129. The issue before the court was whether a cause of action existed against the fraternity for negligently serving liquor to an intoxicated minor. *Id.* at 643, 485 P.2d at 23.

130. *Id.*

131. *Id.* at 639, 485 P.2d at 21. In 1979, the Oregon legislature enacted a statute permitting a plaintiff to sue a private host who serves alcohol to a visibly intoxicated guest. OR. REV. STAT. § 30.995 (1984).

132. 258 Or. 643, 485 P.2d at 23.

133. 21 Cal. 3d 144, 577 P.2d 669, 145 Cal. Rptr. 534 (1978).
owner and manager served alcohol to a group of tenants in the apart-
ment complex. One guest became intoxicated and later, while driv-
ing under the influence, injured a passenger. The passenger sued
under both statutory and common law negligence principles. The
court interpreted the California statute that prohibits the sale or fur-
nishing of alcohol to an intoxicated person to include social hosts.
Under this statutory provision the court found the social host liable for
serving alcohol to the intoxicated guest.

The Coulter court also analyzed the case under common law negli-
gence principles and articulated a fundamental California common
law principle: a person owes a duty of reasonable care to another if a
risk of harm is foreseeable. The court found that defendants, know-
ing that the guest intended to drive, could reasonably foresee a third
party injury resulting from serving alcohol to the intoxicated guest.
The defendants breached their duty by continuing to serve alcohol to
the obviously intoxicated guest. The court held that social hosts and
other non-commercial alcohol providers are liable under common law
negligence principles if they serve alcohol to obviously intoxicated
guests who pose a reasonably foreseeable risk of harm to third per-
sons. The court balanced the strong public policy against drunk
driving with the burden imposed on non-commercial suppliers, finding in favor of social host liability because intoxicated drivers seriously
threaten the lives of the public.

134. Id. at 148, 577 P.2d at 671, 145 Cal. Rptr. at 536.
135. Id.
136. Id. at 151, 577 P.2d at 672, 145 Cal. Rptr. at 537.
137. Id. The relevant section of the California Business and Professions Code reads:
"Every person who sells, furnishes, gives or causes to be sold, furnished or given away,
any alcoholic beverage to ... any obviously intoxicated person is guilty of a misde-
meanor." CAL. BUS. & PROF. CODE § 25602 (West Supp. 1985). The court found that
"every person" applies to both commercial and non-commercial suppliers of alcoholic
beverages. 21 Cal. 3d at 151, 577 P.2d at 672, 145 Cal. Rptr. at 537.
138. Id. at 153, 577 P.2d at 673, 145 Cal. Rptr. at 538.
139. Id.
140. Id. at 153, 577 P.2d at 674, 145 Cal. Rptr. at 539.
141. Id. The court found that a reasonably receptive host could foresee the danger
of ultimate harm as well as a bartender.
142. Id.
143. Id.
144. Id. at 155, 577 P.2d at 675, 145 Cal. Rptr. at 540.
145. Id. The California legislature subsequently abrogated Coulter when it enacted
a statute that precludes social host liability through a mandate that the proximate cause
Kelly v. Gwinnel\textsuperscript{146} provides the most complete discussion of social host liability. In Kelly the Supreme Court of New Jersey followed the Coulter rationale and recognized a cause of action against a social host.\textsuperscript{147} The defendant in Kelly invited a friend to his home and served a few drinks.\textsuperscript{148} Shortly after finishing the drinks, the friend left the defendant's home and caused a head-on collision, injuring the plaintiff.\textsuperscript{149} The court held that a social host who serves alcohol to an adult guest is liable under common law negligence for injuries to third persons caused by the guest's drunk driving, if the host knew the guest would soon be driving while intoxicated.\textsuperscript{150}

The court first considered whether the defendant owed the plaintiff a duty of reasonable care.\textsuperscript{151} The court applied the Rappaport balancing test\textsuperscript{152} and found that imposing a duty on social hosts is fair and consistent with policy.\textsuperscript{153} Because the defendant had failed to reasonably oversee the serving of liquor to his guest, the court further held that the

of a third party's injuries sustained from the acts of an intoxicated person is the consumption, rather than the furnishing, of alcohol. CAL. CIV. CODE § 1714(b) (West Supp. 1985).

New Jersey took a similar approach in Figuly v. Knoll, 185 N.J. Super. 477, 449 A.2d 564 (1982). In Figuly the court recognized a cause of action against a social host under common law negligence principles. \textit{Id.} at 478, 449 A.2d at 565. The defendant held a party on rented premises where he resided. \textit{Id.} at 479, 449 A.2d at 564. One guest was served 12 mixed drinks over a five hour period and became visibly intoxicated. \textit{Id.} The guest left the party and was involved in a car accident, injuring the plaintiff. \textit{Id.} at 478, 449 A.2d at 564. The court denied the defendant's motion for summary judgment and held that a social host who furnishes alcohol to an obviously intoxicated person under circumstances that create a reasonably foreseeable risk of harm to others may be held legally responsible to third persons who are injured. \textit{Id.}


147. \textit{Id.} at 544, 476 A.2d at 1222.

148. \textit{Id.} at 544, 476 A.2d at 1220. After the accident, the friend was given a blood test that indicated a blood alcohol concentration of 0.286%. \textit{Id.} A person who drives with a blood alcohol concentration of 0.10% or more violates N.J. STAT. ANN. § 39:4-5 (West 1983). At trial, plaintiff's expert testified that the blood test revealed that the friend had consumed the equivalent of 13 drinks. \textit{Id.}

149. \textit{Id.}

150. \textit{Id.} at 548, 476 A.2d at 1224-25.

151. \textit{Id.} at 546, 476 A.2d at 1222.

152. \textit{See supra} notes 99-109 and accompanying text.

153. 196 N.J. at 544, 476 A.2d at 1222. In balancing the various factors on the issue of liability, the court considered the thousands of deaths drunk drivers cause each year, the fact that liquor licensees are prohibited from serving intoxicated adults, and the legislative imposition of criminal sanctions against drunk drivers. \textit{Id.}
defendant breached his duty.\textsuperscript{154} The court abandoned the traditional proximate cause rule\textsuperscript{155} and found that serving alcohol was the proximate cause of the plaintiff's injury.\textsuperscript{156} The court based its decision on two rationales. First, people injured as a result of drunk driving should be fairly compensated.\textsuperscript{157} Second, imposing social host liability deters drunk driving.\textsuperscript{158} In the court's opinion, social host liability will encourage hosts to take greater care when serving alcohol at social gatherings.\textsuperscript{159}

Judge Gibraldi's dissent strongly disagreed with the majority's rationale.\textsuperscript{160} Gibraldi focused on the importance of judicial deference to the legislature,\textsuperscript{161} stating that the legislature is better equipped to effectuate the goals of reducing drunk driving and protecting the interests of injured parties without placing such a grave burden on the average citizen.\textsuperscript{162} The dissent also criticized the majority for ignoring the differences between vendors and social hosts.\textsuperscript{163} Gibraldi asserted that the majority failed to recognize the average citizen's ignorance in determining whether a guest is intoxicated and hosts' inability to spread

\begin{itemize}
  \item \textsuperscript{154} \textit{Id.} See also Special Project, \textit{supra} note 4, at 1109-10 (host may serve guest up to the point of intoxication without breaching his duty to reasonably oversee the service of liquor to his guest).
  \item \textsuperscript{155} See \textit{supra} notes 17-19 and accompanying text.
  \item \textsuperscript{156} 196 N.J. 544, 476 A.2d at 1221-22.
  \item \textsuperscript{157} \textit{Id.} at 551, 476 A.2d at 1226. For a critical discussion of the \textit{Kelly} court's rationale, see Note, \textit{supra} note 1, at 616; see also Comment, \textit{supra} note 70, at 98 (discusses the impact \textit{Kelly} could have on the majority rule of social host immunity).
  \item \textsuperscript{158} 196 N.J. at 551, 476 A.2d at 1226.
  \item \textsuperscript{159} \textit{Id.}
  \item \textsuperscript{160} \textit{Id.} at 560, 476 A.2d at 1230.
  \item \textsuperscript{161} \textit{Id.} Gibraldi argued that the majority's decision was based on little knowledge or concern for the possible negative consequences of its decision. \textit{Id.} at 565, 476 A.2d at 1232.
  \item \textsuperscript{162} \textit{Id.} at 569, 476 A.2d at 1234. Gibraldi listed four possible solutions the legislature may consider:
    \begin{enumerate}
      \item Funding a remedy for injured parties with contributions from parties most responsible for the harm caused, the intoxicated motorist;
      \item Hold the Social host secondarily liable by requiring judgment against the drunk driver as a prerequisite to suit against the host;
      \item Limiting the amount that could be recovered from a social host; and
      \item Requiring a finding of wanton and reckless conduct before holding a social host liable.
    \end{enumerate}
    196 N.J. at 569-70, 476 A.2d at 1235. \textit{See} Special Project, \textit{supra} note 4, at 1113 (discusses \textit{Kelly} dissent).
  \item \textsuperscript{163} \textit{Id.} at 564, 476 A.2d at 1232.
liability costs among their guests.\textsuperscript{164}

3. Analysis

Legislatures and courts are attacking the concept of social host liability under common law negligence principles.\textsuperscript{165} Traditional causation theory\textsuperscript{166} must be expanded to accommodate social host liability. To hold a social host liable requires finding that, but for the social host's furnishing liquor to an intoxicated person, the third party would not have been injured. A fundamental flaw exists in this theory.\textsuperscript{167} The guest's consumption is voluntary.\textsuperscript{168} The individual will become intoxicated regardless of how or from whom he obtains the liquor. The social host merely provides alcohol that the drunken individual would obtain elsewhere. Despite the social host's act of furnishing liquor, the "consumer" would still create the same risk of injury to the third party. The social hosts' act is, therefore, not the "actual" cause of the injury.

Additionally, furnishing liquor is not the proximate cause of the resulting injury. A drunk guest's voluntary decision to consume liquor to the point of intoxication and thereafter drive an automobile are intervening acts. These acts supersede a social host's offering of liquor because the social host cannot reasonably foresee that the guest will become intoxicated, drive his car, and injure a third party. Thus, the social host's act cannot fairly be considered the legal cause of the injury. The guest who voluntarily becomes intoxicated and assumes the risk of driving a car is the negligent if not reckless party. Full blame for the injuries belongs on the drunk driver.\textsuperscript{169}

\begin{itemize}
  \item \textsuperscript{164} Id. at 565, 476 A.2d at 1233-34.
  \item \textsuperscript{165} See supra note 125 (California and New Jersey legislatures' negative response to social host liability). For examples of courts' refusal to impose social host liability, see Kowal v. Hofher, 181 Conn. 355, 436 A.2d 1 (1980); Miller v. Moran, 96 Ill. App. 3d 596, 421 N.E.2d 1046 (1981); Cole v. City of Spring Lake Park, 314 N.W.2d 836 (Minn. 1982).
  \item \textsuperscript{166} See supra notes 17-19 and accompanying text. See also supra notes 99-109 and accompanying text (discusses the shift in theories).
  \item \textsuperscript{167} See supra notes 92-109, 155-59 and accompanying texts (discuss the theory of proximate cause under social host liability).
  \item \textsuperscript{168} A voluntary act is unimpelled by another's influence; such acts are the result of free choice. BLACK'S LAW DICTIONARY 1413 (5th ed. 1979).
  \item \textsuperscript{169} For further criticism of social host liability under common law negligence principles, see Note, supra note 1, at 634 (social host liability is too burdensome for the average citizen).
\end{itemize}
One goal of the tort system is to properly attribute fault for drunk driving accidents. This goal is not achieved unless the party at fault, the drunk driver, is held fully accountable. Social host liability impedes efforts to reach this goal because it allows drunk drivers to share liability with social hosts. Drunkenness does not relieve automobile drivers of their duty of ordinary care. Yet, stretching negligence law to hold social hosts liable achieves this exact effect.

The tort system is also designed to deter negligent and intentional misconduct. Making social hosts liable will not advance this objective. Rather, social host liability will only encourage drunk driving because guests know they can pass off their liability to the host who served the liquor.

Perhaps the most significant problem with social host liability under common law negligence theory is the requirement that a social host must have actual knowledge that the guest is intoxicated. This requirement was set forth in *Kelly v. Gwinnel.* The *Kelly* court assumed, however, that the host had knowledge because of the guest's blood alcohol test results. The court made this assumption despite the fact that no correlation exists between blood alcohol test results and a host's subjective knowledge. Though objective tests attempt to measure a guest's intoxication level after an accident, they do not prove that the guest was visibly drunk. Because of the dubious ac-

170. Comment, supra note 19, at 870.

171. W. KEETON, supra note 17, at 178. Courts uniformly hold that voluntary or negligent intoxication cannot serve as an excuse for acts that would otherwise be negligent. *Id.* One who becomes intoxicated is held thereafter to the same standard as if he were a sober person.

172. *Id.*

173. 196 N.J. 549, 476 A.2d at 1225.

174. *Id.* For a discussion of the *Kelly* rule, see Special Project, *supra* note 4, at 1105-09.

175. *See Kelly,* 196 N.J. 565, 476 A.2d at 1233.

176. Objective blood alcohol tests do not necessarily prove that the guest appeared to the host to be intoxicated. Note, *supra* note 1, at 634 (critical discussion of *Kelly*). Experts estimate that alcohol takes 20-30 minutes to reach its highest level in the bloodstream. *Kelly,* 196 N.J. at 565-66, 476 A.2d at 1233. Thus, a blood alcohol concentration test showing intoxication after an accident may not mean that the guest was visibly intoxicated when he left the party. *Id.*

177. 196 N.J. at 566, 476 A.2d at 1233 (dissenting opinion, citing Perr, *Blood Alcohol Levels and Diminished Capacity,* 33 J. LEGAL MED. 28, 28-30 (April 1975)). Furthermore, studies indicate that blood alcohol tests do not accurately determine intoxication levels and should not be relied on for that purpose. *Id.*
accuracy of blood alcohol tests and in light of the difficulty an untrained person has in determining whether another is intoxicated, social host liability places an unreasonable burden on a social host.

III. IMPACT AND RECOMMENDATION

One impact social host liability will have is to increase insurance costs, perhaps to prohibitive levels. If homeowner's insurance does not cover social host liability, social hosts will be forced to obtain additional insurance to protect themselves in case of liability. Potentially aggravating this problem is the possibility that added coverage may be too expensive or perhaps even unavailable. Without the necessary insurance coverage and assuming that the social host cannot personally satisfy the liability judgment award, drunk driving accident victims may not be adequately compensated. Additionally, if insurance coverage is unavailable, social hosts may be forced to completely curtail their service of alcohol to avoid the risk of losing their assets. Even if social hosts can obtain adequate liability insurance coverage, the cost of insurance will rise due to the increased risks this liability coverage poses for insurance companies. Insurance companies will pass the increased costs on to the public in the form of higher insurance premiums. The ultimate loser is the consumer who must pay the increased rates.

Social host liability creates uncertainty among hosts and guests. Neither the courts nor the legislatures have clearly outlined the specific behavior that gives rise to social host liability. Two state legislatures responded to this uncertainty by directly addressing social host liability

178. See Kelly, 196 N.J. 564-65, 476 A.2d at 1232-33 (dissenting opinion attacked majority for ignoring the increased costs of social host liability insurance). See also Special Project, supra note 4, at 1113 (discusses insurance problems).

179. Special Project, supra note 4, at 1113.

180. Id.

181. Comment, supra note 19, at 870.

182. Special Project, supra note 4, at 1113. See also Kelly, 196 N.J. at 560, 476 A.2d at 1230 (dissenting opinion).

183. Comment, supra note 70, at 108.

184. Kelly, 196 N.J. at 567, 476 A.2d at 1234. One problem with this uncertainty is that affirmative defenses may not be available to the social host. First, a social host may assert the defenses of contributory negligence and assumption of the risk, for example, only if the plaintiff is the drunk driver. Contributory negligence is asserted when the plaintiff's conduct entitles him to bring an action. See W. Keeton, supra note 17, at 451. Contributory negligence is inappropriate if the plaintiff is not the drunk driver.
under common law negligence principles. For example, the California legislature, responding to *Coulter*,185 enacted a statute that precludes social host liability.186 Similarly, the New Jersey legislature, responding to *Kelly*, introduced a bill expressly exempting social hosts from liability for serving alcohol to intoxicated guests.187 Aside from California and New Jersey, however, only vague statutes and ambiguous court opinions address social host liability principles under common law negligence.188 Consequently, social hosts have no clear means of regulating their behavior to avoid liability. This may lead to a drastic decrease in social gatherings until the legislatures or courts clearly define what is required of social hosts.

Society is justifiably concerned with the drunk driving problem.189 Social host liability, however, is not the solution. Courts and legislatures must attack the source of the problem—people who voluntarily consume excessive amounts of alcohol.190 One obvious solution is more strict drunk driving laws.191 Social host liability provides drunk

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185. See supra notes 133-45 and accompanying text.
186. See supra note 143 (California's new statute precluding social host liability).
187. The New Jersey bill reads: No person, other than a person licensed . . . to sell alcoholic beverages, who furnishes any alcoholic beverages to any person at or over the age at which a person is authorized to purchase and consume alcoholic beverages shall be civilly liable to any person or estate of any person for personal injuries or property damage, inflicted as a result of intoxication by the consumer of the alcoholic beverage. A. 43, 201st Leg., 1st Sess., 1984 New Jersey Laws.
188. Note, supra note 1, at 634.
189. See supra notes 1-4 and accompanying text.
190. Note, supra note 1, at 634.
191. Id. at 637.
drivers with another means of avoiding full liability. Thus, no incentive to avoid driving while intoxicated exists. More strict drunk driving laws, such as a mandatory twenty-four hour jail sentence plus a one year driver's license suspension for the first offense, are more likely to deter such conduct.

IV. CONCLUSION

Vendor liability based on state dramshop legislation is justified because of the relationship between the vendor and customer, the vendor's ability to spread liability costs among customers, and vendor expertise in recognizing intoxicated persons. Similar reasons for creating a cause of action against social hosts do not exist. Social hosts should, therefore, not be held liable under dramshop statutes or common law negligence principles. Legislative intent underlying dramshop acts and the goals of the tort system favor a social host immunity rule. Strict drunk driving penalties more effectively attack the source of the drunk driving problem. Increased penalties will better effectuate the tort system's goal of fairly compensating drunk driving victims, while also decreasing the number of victims through deterrence.

Social hosts cannot fairly be held responsible for monitoring the drinking activities of their guests. Because adults are expected to be accountable for their own actions, they must assume full responsibility for the consequences of their intoxication.

Angelina Marie Massari*

192. See supra notes 23-38, 52-67 and accompanying texts.
194. See supra notes 39-49, 171-72 and accompanying texts.
195. See, e.g., Comment, Ohio Enacts Stringent Penalties to Deter Drunk Driving, 9 U. DAYTON L. REV. 147 (1983) (Ohio's enactment of stricter drunk driving laws to solve the drunk driving problem).
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