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Social Host Liability in Illinois: Right without a Remedy, 19 J. Marshall L. Rev. 735 (1986)

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SOCIAL HOST LIABILITY IN ILLINOIS: RIGHT WITHOUT A REMEDY

Mary Jones attended a party at a friend's house. The party lasted a long time and Mary willingly participated in the festivities. When she decided to leave Mary got up from her chair, staggered, and fell. Mary was drunk. Still, she decided to leave. The host walked Mary to her car, and physically helped her get in. Three miles from the house, Mary's car crossed the center line and collided head-on with another vehicle seriously injuring a couple and killing their young child.[1]

Because Mary was uninsured, the accident victims have come to you, an attorney, to determine if and how they can obtain adequate compensation for their losses. The other individual in this scenario, the social host, arguably displayed reprehensible conduct when he let Mary become uncontrollably intoxicated knowing that she would be driving. But should Mary's friend be liable for the injuries the couple sustained?

Under the common law, it was not a tort to serve a person an alcoholic beverage. Therefore, the purveyor was not liable for an inebriate's tortious acts.[2] Recently, however, a number of states have abrogated this common law rule.[3] A progressive minority of jurisdictions now hold a social host liable for damages resulting from a

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1. This fact pattern is a hypothetical based on some common characteristics found in social host cases. *See, e.g.*, Miller v. Moran, 96 Ill. App. 3d 596, 421 N.E.2d 1046 (1981) (visibly intoxicated woman involved in accident after leaving party); Kelly v.. Gwinell, 96 N.J. 538, 476 A.2d 1219 (1984) (host served liquor to visibly intoxicated adult guest).

2. 45 AM. JUR. 2D INTOXICATING LIQUORS § 553 (1969). The court in State *ex rel.* Joyce v. Hatfield, 179 Md. 249, 78 A.2d 754 (1951), stated:

> Apart from statute, the common law knows no right of action against a seller of intoxicating liquor, as such, for 'causing' intoxication of the person whose negligence or willful wrong has caused injury. Human beings, drunk or sober, are responsible for their own torts. The law recognizes no relation of proximate cause between a sale [or gift] of liquor and a tort committed by one who has drunk the liquor.

Id. at 254, 78 A.2d at 756. The common law rule of nonliability was qualified in some jurisdictions to allow recovery by third persons against one who sold liquor to another "in such a state of helplessness or debauchery as to be deprived of his willpower or responsibility for his behavior." 45 AM. JUR. 2D INTOXICATING LIQUORS § 553 (1969).

3. Courts now frequently impose liability on commercial vendors of alcohol, employers, and gratuitous suppliers for injuries resulting from an inebriate's driving. Note, *Liability for Injuries Caused by Intoxicated Patrons -A Question of Policy*, 35 OHIO ST. L.J. 630 (1974).

guest's drunken driving.[4] These jurisdictions recognize the growing need to align conventional negligence analysis with contemporary social policy.[5] This trend evinces a sensitivity to society's upheaval of prior norms concerning alcohol use, and a realization that courts must help change social customs in order to stop the senseless losses drunk drivers inflict.[6]

Illinois courts have not been as insightful as have the courts of other jurisdictions when reviewing possible solutions to the enormous number of intoxicated drivers on the State's highways. Instead, Illinois adheres to archaic common law principles developed before the automobile was invented.[7] The reluctance to depart from these precepts reveals the courts' ignorance of modern societal concerns and a disregard for the value of human life.

The need to re-examine Illinois' law on social host liability is becoming increasingly urgent in light of the trend in other jurisdictions[8] and the increasing number of courts that impose liability.[9] This comment examines social host liability for the negligent driving

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4. *See* Giordina v. Soloman, 360 F. Supp. 262 (M.D. Pa. 1973) (statutory violation); Coulter v. Superior Court, 21 Cal. 3d 144, 577 P.2d 699, 145 Cal. Rptr. 543 (1978) (social host liable for violation of state liquor control statute); Sosa v. Ackerby Communications, No. 83-35494 (Dade Cty, Fla. Apr. 12, 1984), *cited in* Comment, *Reconsidering the Illinois Dram Shop Act: A Plea for the Recognition of a Common Law Action in Contemporary Dram Shop Litigation*, 19 J. MAR. L. REV. 49 (1985) (employer liable for employee's negligent driving); Ashlock v. Norris, 120 Ind. App. 281, 475 N.E.2d 1167 (1985) (statutory violation extends civil liability); Clark v. Mincks, 364 N.W.2d 226 (Iowa 1985) (statutory violation); Romeo v. Van Otterloo, 117 Mich. App. 333, 323 N.W.2d 693 (1983) (employer liable for employee's tortious acts); Holmquist v. Miller, 352 N.W.2d 47 (Minn. 1984) (violation of statute); Kelly v. Gwinell, 96 N.J. 538, 476 A.2d 1219 (1984) (liability under common law negligence principles); Weiner v. Gamma Phi Chapter of Alpha Tau Omega Fraternity, 258 Or. 632, 495 P.2d 18 (1971) (college fraternity liable for torts of drunken minor); McClellan v. Tottenhoff, 666 P.2d 408 (Wyo. 1983) (social host may be liable).

5. The court in Lopez v. Maez, 98 N.M. 625, 651 P.2d 1269 (1982) observed:

> A common law doctrine which developed in the horse and buggy days may be out of tune with today's society. The serious danger to the public caused by drunken drivers operating automobiles on public roadways is now a matter of common knowledge that was not experienced by the public when the common law doctrine of denying third parties' recovery against tavernkeepers was developed.

Id. at 630, 651 P.2d at 1273.

6. The New Jersey Supreme Court in Kelly v. Gwinell, 96 N.J. 538, 476 A.2d 1219 (1984), noted that "an extraordinary change is already taking place, that it is not unusual today for hosts to monitor their guests' drinking to some extent." *Id.* at 548, 476 A.2d at 1227. *See also* South Dakota v. Neville, 459 U.S. 553, 558 (1983) (Court referred to changing social values and the recent outcry against drunk drivers).

7. For example, the courts in both Lowe v. Rubin, 98 Ill. App. 3d 496, 424 N.E.2d 710 (1981), and Miller v. Moran, 96 Ill. App. 3d 596, 421 N.E.2d 1046 (1981), relied on the 1889 decision of Cruse v. Aden, 127 Ill. 231, 20 N.E. 73 (1889), when refusing to impose liability on a noncommercial supplier of alcohol.

8. For a discussion of the chaotic state of social host liability in other jurisdictions, see *infra* notes 36-42 and accompanying text.

9. *See supra* note 3.

of an intoxicated guest, and discusses whether it should be implemented in Illinois. The analysis begins by examining the evolution of social host liability in those jurisdictions that recognize such a cause of action.[10] Next, the comment examines social host liability in Illinois.[11] The comment then considers various reasons for supporting host liability in Illinois,[12] and concludes with solutions[13] that the judiciary could implement in this increasingly litigated area of tort law.[14]

Social Host Liability

Many states have enacted statutes, commonly called "dram shop acts," that impose civil liability on commercial vendors who supply alcohol to minors and obviously intoxicated patrons who later injure third parties.[15] Similarly, in order to deter drunk driving

10. *See infra* notes 17-49 and accompanying text.
11. *See infra* notes 50-82 and accompanying text.
12. *See infra* notes 83-122 and accompanying text.
13. *See infra* notes 123-130 and accompanying text.
14. Lawsuits involving liquor liability increased 300 percent last year. *Drunk Driving*, Ibis Rep. (August 1985) (available at The John Marshall Law School, Law Review Office).
15. Fourteen states have enacted dram shop acts. *See* Ala. Code § 6-7-71 (1984); Colo. Rev. Stat. § 30-102 (1975); Ill. Rev. Stat. ch. 43, § 135 (1985); Iowa Code Ann. § 123.91 (West 1984); Me. Rev. Stat. Ann. tit. 17, § 2002 (1983); Mich. Comp. Laws § 436.22 (1984); Minn. Stat. Ann. § 340.95 (West 1984); N.Y. Gen. Oblig. Law § 1101 (McKinney 1984); N.D. Cent. Code § 5-01-06 (1975); Ohio Rev. Code Ann. § 439.01 (Page 1983); R.I. Gen. Laws § 3-11-1 (1976); Utah Code Ann. § 32-11-1 (1984); Vt. Stat. Ann. tit. 7, § 501 (1972).

In the post-civil war period, the common law rule of nonliability for servers of intoxicants was gradually modified by the adoption of dram shop or civil damage acts. Comment, *Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated*, 19 Wake Forest L. Rev. 1013 (1983). *See also* Graham, *Liability of the Social Host for Injuries Caused by the Negligent Acts of an Intoxicated Guest*, 16 Wilamette L.J. 561, 563 (1980) (dram shop acts also referred to as civil damage acts). Dram shop acts established a cause of action against innkeepers for injuries to third parties caused by illegal sales of alcohol to certain classes of intoxicated patrons: minors, habitual drunkards, and those obviously intoxicated. Note, *Social Host Liability for Furnishing Liquor - Finding a Basis for Recovery in Kentucky*, 3 Ky. L.J. 229, 231 (1976). It is generally recognized that the stimulus of early dram shop acts was the temperance movement rather than the more recent concern with drunk driving. *Id.*

Although dram shop acts provide an alternative to the harshness of the common law rule, they generally have not been extended to cover social hosts. The landmark case rejecting such an expansion is Cruse v. Aden, 127 Ill. 231, 20 N.E. 73 (1889). In *Cruse*, Julia Cruse sought recovery under the Illinois Dram Shop Act when her intoxicated husband died after being thrown from a horse. In rejecting Mrs. Cruse's claim, the Illinois Supreme Court stated that, because the statute was "of a highly penal nature," it must be strictly construed. *Id.* at 239, 20 N.E. at 77. This strict construction led the court to hold that the Dram Shop Act only applied to those "engaged in the liquor traffic." *Id.*

Two jurisdictions initially interpreted their dram shop acts as including social hosts as well as licensees. Williams v. Kelmesrud, 197 N.W.2d 614 (Iowa 1972) (host liable); Ross v. Ross, 294 Minn. 115, 200 N.E.2d 149 (1972) (host liable under dram

and compensate innocent victims, some states have imposed liability on gratuitous suppliers.[16] These courts have based liability on two theories: 1) negligence arising from the violation of a state liquor control act,[17] and 2) common law negligence.[18] The violation of a liquor control statute can provide the basis for social host liability when a social host serves alcohol to a minor or an obviously intoxicated adult. Similarly, common law negligence principles can also apply to a host serving a minor or an adult.

Liquor Control Acts

Every state has enacted a liquor control statute to regulate the distribution of alcohol to minors or obviously intoxicated adults.[19]

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shop act). The legislatures in both of these states responded by altering statutes to make it clear that only commercial vendors were subject to liability. IOWA CODE ANN. § 123.95 (West 1983); MINN. STAT. ANN. § 340.95 (West 1983).

Illinois' Dram Shop Act, ILL. REV. STAT. ch. 43, § 135 (1985), relies on the doctrine of strict liability. Plaintiffs need only show that the sale or gift of intoxicating liquor caused the intoxication, and not that the defendant was negligent or violated a liquor control law. *Id.* The Act limits recoverable damages to $15,000 for loss of property of any person and $20,000 for loss of means of support. *Id. See generally* Mullin, *Overview of the Act/Defense, Dram Shop/Structural Work Act* (IICLE) §§ 1.5 to 1.7 (1976) (comprehensive discussion of actions under dram shop act).

16. For jurisdictions imposing liability on noncommercial vendors, see *supra* note 3.

17. Liquor control statutes forbid the sale or gift of intoxicating liquor to minors or obviously intoxicated persons. *E.g.*, ILL. REV. STAT. ch. 43, § 131 (1985) (prohibits delivery to intoxicated person, minors or habitual drunkards).

18. The traditional elements for a negligence cause of action are:

1) A duty, or obligation, recognized by the law, requiring the actor to conform to a certain standard of conduct, for the protection of others against unreasonable risks.

2) A failure on the actor's part to conform to the standard required.

3) A reasonably close causal connection between the conduct and the resulting injury. This is what is commonly known as "legal cause" or "proximate cause."

4) Actual loss or damage resulting to the interests of another.

W. PROSSER & W. KEETON, PROSSER AND KEETON ON TORTS § 291 (5th ed. 1984) [hereinafter cited as W. PROSSER].

Only two jurisdictions have imposed liability based on common law negligence principles. Kelly v. Gwinell, 96 N.J. 538, 476 A.2d 1219 (1984) (host found liable for guest's driving); Weiner v. Gamma Phi Chapter of Alpha Tau Omega Fraternity, 258 Or. 632, 485 P.2d 18 (1971) (fraternity liable for minor's torts).

19. *See* ALA. CODE § 28-7-21 (1982); ARIZ. REV. STAT. ANN. §§ 4-241 to 4-244 (1974); ARK. STAT. ANN. § 48-529 (1977); CAL. BUS. & PROF. CODE §§ 25601, 22658 (West 1964); COLO. REV. STAT. § 12-47-128 (1982); CONN. GEN. STAT. § 30-86 (1975); DEL. CODE ANN. tit. 4, § 713 (1975); D.C. CODE ANN. § 25-121 (1981); FLA. STAT. ANN. § 562 (West 1976); GA. CODE ANN. § 5A-990.1 (1981); HAWAII REV. STAT. § 281-76 (1976); IDAHO CODE § 23-213 (1977); ILL. REV. STAT. ch. 43, § 131 (1985); IND. CODE ANN. §§ 7.1-5-7-8 (Burns 1982); IOWA CODE ANN. § 123.49 (West 1982); KAN. STAT. ANN. § 41-2615 (1981); KY. REV. STAT. ANN. § 41-2615 (Baldwin 1981); LA. REV. STAT.ANN. § 14.91 (West 1974); ME. REV. STAT. ANN. tit. 28, § 303 (1982); MD. PUB. HEALTH CODE ANN. § 2B (1979); MASS. GEN. LAWS. ANN. ch. 138, § 34 (West 1974); MICH. COMP. LAWS ANN. § 436.22 (West 1978); MINN. STAT. ANN. § 340.73 (West 1971); MISS. CODE ANN. § 67-81 (1982); MO. ANN. STAT. §§ 311-320 (Vernon 1982); MONT. CODE ANN. § 45-5-64 (1981); NEB. REV. STAT. § 210 (1979); NEV. REV. STAT. § 202.055 (1981); N.H. REV.

Violations of these statutes typically impose criminal penalties.[20] Because most jurisdictions impose civil liability for the violation of a penal statute,[21] the majority of successful social host liability suits have been premised on a violation of these acts.[22]

In 1971, California became the first state to recognize civil liability for an individual's violation of a liquor control statute. In *Vesley v. Sager*,[23] the California Supreme Court held a tavern owner personally liable to an injured third party after he furnished intoxicating liquor to an inebriated person, in violation of a state statute.[24] Although *Vesley* dealt with a commercial purveyor, the case established precedent which later formed the basis for finding social host

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STAT. ANN. § 175.6 (1981); N.J. STAT. ANN. § 33.1 (West 1981); N.M. STAT. ANN. §§ 60-7A-16, -7B-1 (1981); N.Y. ALCO. BEV. CONT. LAW. § 65 (McKinney 1970); N.C. GEN. STAT. § 18B (1981); N.D. CENT. CODE § 5-01-09 (1971); OHIO REV. CODE ANN. § 3401 (Page 1982); OKLA. STAT. ANN. tit. 37, § 537 (West 1979); OR. REV. STAT. § 471-40 (1981); PA. STAT. ANN. tit. 47, § 4-493 (Purdon 1969); R.I. GEN. LAWS § 43-8-1 (1976); S.C. CODE ANN. § 61-3-990 (Law. Co-op. 1982); S.D. CODIFIED LAWS ANN. § 35-4-78 (1977); TENN. CODE ANN. § 57-4-203 (1973); TEX. ALCO. BEV. CODE ANN. § 101.63 (Vernon 1981); UTAH CODE ANN. § 32-7-14 (1974); VT. STAT. ANN. tit. 7, § 658 (1978); VA. CODE § 4-62 (1982); WASH. REV. CODE ANN. § 91 (1981); W. VA. CODE § 4-62 (1982); WIS. STAT. ANN. § 125.07 (West 1976); WYO. STAT. 12-6-101 (1981).

20. For a list of state alcoholic beverage control statutes carrying criminal offenses see Note, *Social Host Liability for Injuries Caused by the Acts of an Intoxicated Guest*, 59 N.D.L. REV. 445, 459 n. 141 (1983) (21 state statutes carry criminal penalty).

21. For the violation of a penal statute to provide the basis for civil liability, the plaintiff must prove the following elements: the plaintiff was a member of the class for whose protection the statute was enacted and the harm suffered by the plaintiff was of the kind the statute was intended to prevent. W. PROSSER, *supra* note 18, at 220.

Earlier courts rejected liquor control statutes as a basis for liability because they considered the proximate cause of injuries to be the consumption of liquor rather than the furnishing of liquor. Comment, *Tort - Negligence Liability of Social Host for Furnishing Liquor to Guest Who Later Injures a Third Person*, 25 WAYNE L. REV. 975, 977 (1979). Recently, however, courts have not required that the plaintiff prove causation because a presumption exists, in most jurisdictions, that an unexcused violation of a penal statute is negligence *per se*. Note, *Social Host Liability for Furnishing Liquor - Finding a Basis for Recovery in Kentucky*, 3 KY. L.J. 229, 238 (1978).

The majority of jurisdictions rule that the violation of a statute is negligence *per se*. W. PROSSER, *supra* note 18, at 230. In Illinois, however, the violation is merely evidence of negligence which may be accepted or rejected according to all the evidence. Allen v. Dhuse, 104 Ill. App. 3d 806, 433 N.E.2d 356 (1982).

22. *See, e.g.*, Ashlock v. Norris, 120 Ind. App. 281, 475 N.E.2d 1167 (1985) (liquor control statute established standard reasonable person must follow); Clark v. Mincks, 364 N.W.2d 226 (Iowa 1985) (reasonable person standard in penal statute). *But see* Thompson v. Bryson, 19 Ariz. App. 134, 505 P.2d 572 (1973) (violation of alcohol beverage control statute does not create civil liability).

23. 5 Cal. 3d 153, 486 P.2d 151, 95 Cal. Rptr. 623 (1971).

24. *Id.* Defendant, Sager, was engaged in the business of selling alcohol to the public and owned a lodge near the top of a mountain. *Id.* at 157-58, 486 P.2d at 154, 95 Cal. Rptr. at 626. He permitted O'Connell to be served a large quantity of alcohol, knowing that O'Connell would have to drive down a steep winding road on his way home. *Id.* After leaving the lodge, O'Connell proceeded down the mountain, swerved into the oncoming traffic, and collided with the plaintiff's vehicle. *Id.*

liability.[25] First, the court held that liability can be premised on a violation of the state liquor control statute.[26] More importantly, the court ruled that the act of serving the liquor, not the consumption, was the proximate cause of the plaintiff's injuries.[27]

The *Vesley* rationale was finally extended to its logical extreme in *Coulter v. Superior Court*.[28] The *Coulter* court broadly held that civil liability could be imposed upon a social host who, in violation of a statute, provided alcoholic beverages to an obviously intoxicated adult guest, thereby creating a foreseeable risk of harm to third parties.[29] Underlying the *Coulter* court's decision were several policy considerations such as: the availability of insurance coverage to non-commercial suppliers; the reckless nature of serving alcoholic beverages where injury is foreseeable; and the horrifying statistics on alcohol-related fatalities.[30]

Less than one year later the California state legislature expressly overruled both the *Vesley* and *Coulter* decisions.[31] The legislature enacted a statute making an individual's consumption, not the host's service, the proximate cause of a third party's injuries.[32] Despite this legislative mandate, California courts have struggled to

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25. *See* Bernhard v. Harrah's Club, 16 Cal. 3d 313, 546 P.2d 719, 128 Cal. Rptr. 215 (1976) (civil liability based on negligence); Coffman v. Kennedy, 74 Cal. App. 3d 28, 141 Cal. Rptr. 267 (1977) (host liable); Brockett v. Kitchen Boyd Motor Co., 24 Cal. App. 3d 87, 100 Cal. Rptr. 752 (1976) (minor served at party, host liable).

26. *Vesley*, 5 Cal. 3d at 162, 486 P.2d at 160, 95 Cal. Rptr. at 633. The court found that the purpose of the liquor control statute was to protect the general public from injuries caused by excessive use of intoxicating liquor. *Id.*

27. *Id.* at 163, 486 P.2d at 161, 95 Cal. Rptr. at 634. The court "unmasked the common law fiction" of proximate cause. *Id.*

28. 21 Cal. 3d 144, 577 P.2d 669, 145 Cal. Rptr. 534 (1978). In *Coulter*, the plaintiff brought an action against the owners and the manager of an apartment complex for injuries received in an accident with an intoxicated driver. *Id.* The plaintiff alleged that the defendant was negligent for serving the motorist "extreme amounts of alcohol" knowing that she was intoxicated and would be driving an automobile. *Id.* at 150, 577 P.2d at 673, 145 Cal. Rptr. at 537.

29. *Id.*

30. *Id.*

31. In 1978, the California legislature amended section 25662 of the California Business and Professional Code, CAL. BUS. & PROF. CODE § 25662(b), (c) (West 1983), to read:

> (b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage. . .shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.
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> (c) The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as Vesley v. Sager (5 Cal. 3d 153), Bernhard v. Harrah's Club (16 Cal. 3d 313) and Coulter v. Superior Court (21 Cal. 3d 144) be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated individual.

32. The constitutionality of this statute was upheld in Cory v. Shierloh, 229 Cal. 3d 320, 629 P.2d 8, 174 Cal. Rptr. 500 (1981).

devise new theories for imposing liability on gratuitous suppliers.[33] For instance, one recent California appellate court decision held that parents who gave money for the purchase of an automobile to an adult daughter with a severe drinking problem were liable for injuries resulting from the daughter's drunk driving.[34] The opinion stressed that "[i]mposing potential liability on the [parents] serves the important public policy of protecting the public from intoxicated drivers who cause needless and tragic deaths and injuries on the highways."[35] Though this decision may appear extreme, creative decisions like this elucidate the courts' strong desire to retain civil liability despite legislative abrogation.

More recently, a growing number of state court decisions have held social hosts, who violated liquor control statutes, liable to injured third parties.[36] The courts in these cases have reasoned that a social host should not be immune from liability for a guest's negligent acts merely because the host was a noncommercial vendor.[37] These same courts have also noted that the imposition of liability on

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33. In Cantor v. Anderson, 126 Cal. App. 3d 157, 178 Cal. Rptr. 540 (1982), a California appellate court imposed liability on a social host who served a developmentally disabled man who later injured the plaintiff. The court held:

> [W]here a social host knows that his guest is one who because of some exceptional physical or mental condition should not be served alcoholic beverages and is or should be aware of risks included in providing such person with alcohol, the host is not protected by provisions of the statute governing responsibility for willful acts and negligence which provides that consumption of alcoholic beverages, not furnishing thereof, is proximate cause of injuries resulting from intoxication.

Id. at 161, 178 Cal. Rptr. at 545.

In Harris v. Trojan Fireworks Co., 120 Cal. App. 3d 157, 174 Cal. Rptr. 452 (1981), the court adopted the theory of *respondeat superior* to impose civil liability upon an employer for injuries to a third person caused by an employee who became intoxicated at a company Christmas party. The court found a sufficient connection between "the employment or the employer's Christmas party and the employee's negligent act to justify holding the employer financially responsible for the injuries occasioned by the employee's accident." *Id.* at 164, 174 Cal. Rptr. at 456.

34. McKenna v. Straughan, 176 Cal. App. 3d 910 (1986).

35. *Id.* at 915.

36. In Ashlock v. Norris, 120 Ind. App. 281, 475 N.E.2d 1167 (1985), the administratrix of the estate of a pedestrian who was struck and killed by a motorist brought a wrongful death action against the motorist's friend who furnished the driver with alcohol. The court held that the administratrix properly stated a claim for relief based on the violation of a statute prohibiting persons from giving alcoholic beverages to those known to be intoxicated. *Id.* at 284, 475 N.E.2d at 1170. Similarly, in Clark v. Mincks, 364 N.W.2d 226 (Iowa 1985), the parents of a child who was killed when a car driven by a social guest was involved in an accident brought an action against the hosts of a cookout the guest had attended. The court held the hosts liable, and based liability on a violation of Iowa's Liquor Control Act, IOWA CODE § 123.49 (1981). *See also* Romeo v. Van Otterloo, 117 Mich. App. 333, 323 N.W.2d 693 (1983) (noncommercial supplier liable for statutory violation); McClellan v. Tottenhoff, 666 P.2d 408 (Wyo. 1983) (statute provides basis for host liability).

37. *See, e.g.*, Garcia v. Hargrove, 46 Wis. 2d 724, 734, 176 N.W.2d 566, 571 (1970) ("[i]f the act of providing liquor to one already intoxicated is a negligent act, then it remains a negligent act regardless of who the supplier may be").

a host may reduce the incidence of accidents that drunk driving causes.[38]

Despite a distinct trend toward finding liability,[39] many juris-

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38. In Ashlock v. Norris, 120 Ind. App. 281, 475 N.E.2d 1167 (1985), the court stated that "[i]f we are looking for a deterrent for drinking, sole liability on the drunk driver will not deter as effectively as liability for selling liquor to an inebriate - one cannot drink if no one will sell or give him liquor." *Id.* at 290, 475 N.E.2d at 1169.

39. *See, e.g.*, Carr v. Turner, 238 Ark. 889, 385 S.W.2d 656 (1965) (statute does not establish basis for liability); Manning v. Andy, 454 Pa. 237, 310 A.2d 75 (1973) (no liability for statutory violation).

Cases involving employer liability for the acts of an inebriated employee have been treated in the same manner as those involving social hosts. *See, e.g.*, Cartwright v. Hyatt Corp., 460 F. Supp. 80 (D.D.C. 1978) (no liability for employer buying drinks for employee after working hours); DeLoach v. Mayer Elec. Supply Co., 378 So.2d 733 (Ala. 1979) (no cause of action against employer). In Romeo v. Van Otterloo, 117 Mich. App. 333, 323 N.W.2d 693 (1982), however, the Michigan Court of Appeals held that a cause of action for negligence existed against an employer for the torts of an intoxicated employee. The court found that the action was not barred by the state's dram shop act, which only applied to commercial vendors. *Id.* at 337, 323 N.W.2d at 696.

Respondeat superior has also been utilized when an employer supplies alcohol to an employee who later injures a third party. Harris v. Trojan Fireworks Co., 120 Cal. App. 3d 157, 174 Cal. Rptr. 452 (1981) (employer liable); Boynton v. McKales, 139 Cal. App. 3d 77, 294 P.2d 733 (1956) (employer liable for injuries caused by intoxicated employee who attended off-premises banquet). *But cf.* Brehm v. Dobson, 15 Ill. App. 3d 285, 304 N.E.2d 149 (1973) (employer not liable for injuries caused by intoxicated employee on way home from office Christmas party); Rowe v. Colwell, 67 Mich. App. 543, 241 N.W.2d 284 (1972) (inebriated employee returning from social visit at employer's home not within scope of employment). For a discussion of employer liability at company sponsored parties, see Comment, *Employer Liability for a Drunken Employee's Actions Following an Office Party: A Cause of Action Under Respondeat Superior*, 19 CAL. W.L. REV. 107 (1982) (discussion of scope of employment). The theory of *respondeat superior* is used to subject an employer to vicarious liability for his servant's negligence when the servant's negligence is within the scope of employment. Chappel v. Dean, 258 N.C. 412, 128 S.E.2d 830 (1963). To fall within the scope of employment, an act must be perceived as in some way benefiting the employer's business and must be an activity that the employer has a right to control. W. PROSSER, *supra* note 18, at 461.

Problems arise when a negligent act, such as drinking takes place within the scope of employment, but an injury to a third party occurs after the employee has departed from work. The general rule in Workers Compensation and *respondeat superior* cases is that employers are not responsible for injuries resulting from the negligent acts of employees who are going to and coming from work or who have departed on frolics or detours. *See, e.g.*, Duckworth v. Metcalf, 268 N.C. 340, 150 S.E.2d 485 (1966) (employer not liable for employee's torts during frolic and detour). *See* W. PROSSER, *supra* note 18, at 462 (discussion of frolic and detour).

In Boynton v. McKales, 130 Cal. App. 2d 77, 294 P.2d 733 (1956), an employer sponsored an optional company banquet, off company premises, after working hours. An intoxicated employee injured a third party in an automobile accident on his way home. The court considered the case under Workers Compensation law, and held that attendance at the banquet fell within the scope of employment because attendance was expected to benefit the employer. *Id.* at 81, 294 P.2d at 737. Since the employee was returning home from a "special mission" the coming and going rule did not apply and liability was imposed on the employer. *Id.* For a discussion of the special mission rule, an exception to the coming and going doctrine, see 1 A. LARSON, WORKMEN'S COMPENSATION LAW § 22.23 (Cum. Supp. 1983) (required trip by employee outside normal trip to and from work).

dictions still hold that the violation of an alcoholic beverage control statute does not afford an injured third party relief against a social host.[40] Instead, these jurisdictions confine the application of those statutes to retail distributors.[41] The courts' rationale for this restrictive coverage is that the legislature intended these acts to regulate the liquor industry only.[42] However, another basis for imposing social host liability can be found in traditional negligence principles.

Traditional Negligence Principles

The majority of jurisdictions still do not impose liability on social hosts under a common law negligence analysis.[43] The rationale for nonliability is based on early decisions which held that consumption, rather than the sale of liquor, is the proximate cause of the plaintiff's injuries.[44] Many jurisdictions, however, have now abrogated this dogmatic rationale. These courts, under dram shop legislation, reason that because personal injury is a forseeable consequence of giving an inebriated individual more liquor, the dispensing of intoxicants is the proximate cause of the plaintiff's injuries. As a result, the majority of jurisdictions now extend common law liability to commercial suppliers.[45] Most of these same jurisdic-

40. *See e.g.*, Carr v. Turner, 238 Ark. 889, 385 S.W.2d 656 (1965) (no liability); Manning v. Andy, 454 Pa. 237, 310 A.2d 75 (1973) (statutory violation does not afford relief against host).

41. *See, e.g.*, Edgar v. Kajet, 84 Misc. 2d 100, 375 N.Y.S.2d 548 (1975), *aff'd*, 55 A.D.2d 597, 389 N.Y.S.2d 631 (1976) (no liability for gratuitous suppliers); Couts v. Ghion, 281 Pa. Super. 135, 421 A.2d 1184 (1980) (liability only imposed on those licensed to sell alcohol).

42. Hulse v. Driver, 11 Wash. App. 509, 524 P.2d 255 (1974). In *Hulse*, the court stated that if civil liability is to be extended to a social host, "such a policy decision should be made by the legislature after full investigation, debate and examination of the relative merits of the conflicting positions." *Id.* at 513, 524 P.2d at 260. Likewise, in Holmes v. Circo, 196 Neb. 496, 244 N.W.2d 65 (1976), the Nebraska Supreme Court refused to impose liability on a social host. The court found that the purpose "of a prohibitory statute. . .is to regulate the business of selling intoxicants, and not to enlarge civil remedies." *Id.* at 499, 244 N.W.2d at 70. Illinois courts are in accord with this deference to legislative judgment. *See infra* note 60 and accompanying text.

43. Only two jurisdictions, New Jersey and Oregon, have imposed liability under a traditional negligence analysis. *See supra* note 18 and accompanying text.

44. 44 AM. JUR. 2D INTOXICATING LIQUORS § 553 (1969). The courts based the rationale for this rule on the Protestant ethic that a person should admit his wrongful conduct and accept individual responsibility for the consequences of his behavior. Keenan, *Liquor Law Liability in California*, 14 SANTA CLARA L. REV. 46, 48 (1983). *But see* Ibach v. Jackson, 148 Or. 92, 35 P.2d 672 (1934) (getting woman so intoxicated that she fell and was killed); McCue v. Klein, 60 Tex. 168 (1883) (liability for inducing drunkard to drink three pints of whiskey in rapid succession, causing death). *See generally* Johnson, *Drunken Driving - The Civil Responsibility of the Purveyor of Intoxicating Liquor*, 37 IND. L.J. 317 (1962) (traces origins of common law rule and exceptions).

45. The following jurisdictions have abrogated the common law rule of nonliability for a liquor vendor, and recognize the imposition of liability on a tavern owner for injuries sustained by third persons as a result of the acts of an intoxicated patron:

tions that place liability on commercial suppliers currently avoid social host liability by reasoning that, just as with dram shop legislation, only the legislature can impose social host liability.[46] However, the more perceptive courts have found a way to judicially impose liability on social hosts.

The first state court decision to allude to a potential common law cause of action was *Halverson v. Burchfield Boiler*.[47] In *Halverson*, the Washington Supreme Court refused to impose liability on an employer who served liquor to an employee. In dicta, however, the court noted that a possible exception to nonliability might apply to people who serve "obviously intoxicated individuals."[48]

The first case to take this dicta to its logical conclusion was *Weiner v. Gamma Phi Chapter of Alpha Tau Omega*.[49] In *Weiner*, a college fraternity served large quantities of beer to a minor. The minor, while driving home, was involved in an automobile collision that injured the plaintiff.[50] The Oregon Supreme Court found the fraternity negligent because the organization's "status as host and its di-

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Nazareno v. Urie, 638 P.2d 671 (Alaska 1981) (traditional proximate cause analysis not in accord with modern tort theory); Ontiveros v. Borak, 136 Ariz. 500, 667 P.2d 100 (1983) (common law proximate cause abandoned); Kerby v. The Flamingo Club, Inc., 35 Colo. App. 127, 532 P.2d 975 (1975) (commercial supplier liable); Davis v. Shiappocassee, 155 So. 2d 365 (Fla. 1963) (tavern owner liable); Ono v. Appelgate, 62 Hawaii 131, 612 P.2d 533 (1980) (abrogated common law rule); Alegria v. Paynok, 101 Idaho 617, 619 P.2d 135 (1980) (proximate cause rationale outdated); Elder v. Fisher, 247 Ind. 598, 217 N.E.2d 847 (1966) (case later used to find host liability); Lewis v. State, 256 N.W.2d 181 (Iowa 1977) (abandoned nonliability rule); Pike v. George, 434 S.W.2d 626 (Ky. 1968) (liability found); Adamian v. Three Sons, Inc., 353 Mass. 498, 232 N.E.2d 18 (1968) (policy reasons for change from nonliability); Thut v. Finley, 50 Mich. App. 611, 213 N.W.2d 820 (1973) (employer liable); Trial v. Christen, 298 Minn. 101, 213 N.W.2d 618 (1973) (traditional rule abrogated); Munford, Inc. v. Peterson, 368 So. 2d 213 (Miss. 1979) (follows modern view); Ramsey v. Anctil, 106 N.H. 375, 211 A.2d 900 (1965) (tavern owner liable); Rapport v. Nichols, 31 N.J. 188, 156 A.2d 1 (1959) (started social host trend in that state); Lopez v. Maez, 98 N.M. 625, 651 P.2d 1269 (1982) (traditional rule from horse and buggy days); Berkeley v. Park, 47 Misc. 2d 381, 262 N.Y.S.2d 290 (1965) (overruled traditional theory); Mason v. Roberts, 33 Ohio St. 2d 29, 294 N.E.2d 884 (1973) (abrogated common law rule); Campbell v. Carpenter, 279 Or. 237, 566 P.2d 893 (1977) (liability); Jardine v. Upper Darby Lounge, Inc., 413 Pa. 616, 198 A.2d 550 (1964) (abandoned old proximate cause rationale); Hulse v. Driver, 11 Wash. App. 509, 524 P.2d 255 (1974) (liability); McClellan v. Tottenhoff, 666 P.2d 408 (Wyo. 1983) (liability imposed).

46. A good example of this contradictory position is found in Hulse v. Driver, 11 Wash. App. 509, 524 P.2d 255 (1974). In *Hulse*, the court noted that although Washington follows the modern proximate cause rationale when dealing with commercial suppliers, this same rationale will not be extended to social hosts. *Id.* at 512, 524 P.2d at 261. "Such a policy decision should be made by the legislature after full investigation, debate and examination of the relevant merits of conflicting positions." *Id.* *See also* Collier v. Stamatis, 63 Ariz. 285, 162 P.2d 125 (1945) (proximate cause not extended to social host).

47. 76 Wash. 2d 959, 458 P.2d 897 (1969).

48. *Id.* at 963, 458 P.2d at 900.

49. 258 Or. 632, 485 P.2d 18 (1971).

50. *Id.* The plaintiff was a passenger in the intoxicated minor's vehicle. He was injured when the minor drove into a building. *Id.*

rect involvement in furnishing liquor" imposed a duty to prevent the minor from causing an unreasonable risk to third persons.[51]

New Jersey has also recognized social host liability under a conventional negligence analysis.[52] In *Kelly v. Gwinell*,[53] a host served excessive amounts of liquor to an adult guest, knowing the guest would be operating an automobile. While driving home the guest caused an accident. The New Jersey Supreme Court held the host liable for injuries resulting from the guest's negligent driving.[54] The court focused on the foreseeability of harm likely to follow when a host serves excessive amounts of alcohol to one who will be driving a motor vehicle.[55] The court also emphasized that various public policy reasons overwhelmingly support the imposition of liability.[56] De-

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51. *Id.* at 636, 485 P.2d at 22. The court found that no cause of action existed against the individual fraternity member who actually served the liquor. The court stated, "we feel that liability should not be extended to one who acts as a conduit in providing alcohol to those who directly serve it to others." *Id.* at 637, 485 P.2d at 23.

The legislature preempted the *Weiner* holding, which allowed a trial court to determine liability on a case by case basis. OR. REV. STAT. § 30.955 (1979), provides that "[n]o private host is liable for damages incurred or caused by an intoxicated social guest unless the private host has served or provided alcoholic beverages to a social guest when such guest was visibly intoxicated." OR. REV. STAT. § 30.960 (1979) states:

> [N]o social host shall be liable to third persons injured by or through persons not having reached 21 years of age who obtained alcoholic beverages from the licensee, permittee or social host unless it is demonstrated that a reasonable person would have determined that identification should have been requested or that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was served.

52. The basis for finding social host liability in New Jersey began in Rapport v. Nichols, 31 N.J. 188, 156 A.2d 1 (1959). The court in *Rapport* construed an alcoholic beverage control statute as imposing civil liability on a commercial vendor. *Id.* In Linn v. Rand, 140 N.J. Super 21, 356 A.2d 15 (1976), a New Jersey court extended the *Rapport* decision. In *Linn*, an infant brought an action for injuries he received when struck by a car driven by the minor defendant. *Id.* The plaintiff alleged that the minor was served alcoholic beverages in the home of the defendant. *Id.* The court imposed liability on the social host, stating that "[i]t makes little sense to say that the licensee in *Rapport* is under a duty to exercise care, but give immunity to a social host who may be guilty of the same wrongful conduct merely because he is unlicensed." *Id.* at 360, 356 A.2d at 18.

53. 96 N.J. 538, 476 A.2d 1219 (1984).

54. *Id.*

55. *Id.* at 552-53, 476 A.2d at 1226.

56. *Id.* at 551, 476 A.2d at 1226. The *Kelly* court focused on the plight of the accident victim, and refused to acknowledge any distinction between social hosts and licensees. *Id.* at 548, 476 A.2d at 1224. The emotionally charged opinion stressed the tremendous social cost of drunk driving, and reasoned that the need to provide compensation for its innocent victims outweighed any dislocation in social habits or any threat of disproportionate financial loss to social hosts. *Id.* While admitting that a social host may be less culpable than an intoxicated adult guest, the majority stressed that hosts are not faultless and that trial courts could apportion financial responsibility between the host and his guest. *Id.* at 549-50, 476 A.2d at 1225. In her dissenting opinion, Justice Garibaldi emphasized the practical differences between social hosts and licensees. *Id.* at 551, 476 A.2d at 1230 (1984) (Garibaldi, J., dissenting). The commercial bartender is better qualified to discern intoxication among his customers, and better equipped to deal with intoxicated people. *Id.* at 552, 476 A.2d at 1232. Justice

spite these decisions, Illinois courts take a contrary view on social host liability.

Illinois' Position on Social Host Liability

Illinois courts have generally refused to impose liability on a social host for injuries resulting from a guest's intoxication.[57] These decisions have used three theories for denying liability. First, the courts are unwilling to depart from the longstanding common law rule that consumption, and not the serving of alcohol, is the proximate cause of a plaintiff's injuries.[58] Second, the courts refuse to expand statutory dram shop liability to include noncommercial purveyors of alcohol.[59] Finally, the courts wish to defer to legislative judgment in imposing liability on gratuitous suppliers.[60]

Illinois' strict adherence to the common law proximate cause doctrine is an unpersuasive reason for ignoring both the trend toward imposing social host liability and the prevailing public outcry against intoxicated drivers. Jurisprudence of the last century has shown that because society is dynamic, the law should not be static.[61] Though *stare decisis* plays an important role in determining the outcome of cases, it is certainly not the entire process.[62] The tenants of *stare decisis* should not be so rigid as to incapacitate a

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Garibaldi also stressed that the legislature was the appropriate body to make a public policy decision with such burdensome consequences. *Id.*

57. *See, e.g.*, Howlett v. Doglio, 402 Ill. 311, 83 N.E.2d 708 (1949) (no liability); Schulte v. Shleeper, 210 Ill. 357, 71 N.E. 325 (1904) (no liability).

58. In Miller v. Moran, 96 Ill. App. 3d 596, 421 N.E.2d 1046 (1981), the court relied on the traditional common law rule as applied in Cunningham v. Brown, 22 Ill. 2d 23, 174 N.E.2d 153 (1961), to deny imposing liability on a social host.

59. *See, e.g.*, Miller v. Owens-Illinois Glass Co., 48 Ill. 2d 412, 199 N.E.2d 300 (1964) (strictly construed dram shop act); Camille v. Berry Fertilizers, Inc., 30 Ill. App. 3d 1050, 334 N.E.2d 205 (1975) (dram shop preempts field of civil liability).

60. In Miller v. Moran, 96 Ill. App. 3d 596, 421 N.E.2d 1046 (1981), the court stated that:

> A change in the law which has the power to so deeply affect social and business relationships should only be made after a thorough analysis of all the relevant considerations. The type of analysis required is best conducted by the legislature using all the methods it has available to it to invite public participation.

Id. at 600, 421 N.E.2d at 1049. The *Miller* court relied on a Wisconsin Supreme Court case, Olsen v. Copeland, 90 Wis. 2d 483, 280 N.W.2d 178 (1979), which refused to impose liability on a social host in light of a modern negligence analysis. One of the considerations the *Olsen* court weighed was whether there was a judicial trend towards imposing liability. *Id.* at 486, 280 N.W.2d at 182-83. Had there been a nationwide trend to impose liability, the *Olsen* court might have found the host liable. Since the *Olsen* decision in 1979, however, nine more jurisdictions impose liability on gratuitous suppliers of intoxicants. *See supra* note 3.

61. Beaney, *The Right to Privacy in American Law*, 31 LAW & CONTEMP. PROBS. 253, 255 (1966) (discussing need to align negligence analysis with contemporary problems).

62. Colligan v. Cousar, 38 Ill. App. 2d 396, 400, 187 N.E.2d 287, 293 (1963) ("*stare decisis* is an important factor in the judicial process, but we must not forget it is not the whole process").

court in its duty to develop the law.[63] In social host liability cases, Illinois' courts still rely on decisions dating back to 1889.[64] When deciding host liability cases, the courts must realize that these rules were developed in the horse and buggy days and have no appreciation for the fact that an automobile in the hands of a drunken driver is a lethal weapon.[65] Awareness of broadening social policies should provide impetus for the judiciary to adopt a contemporary proximate cause rationale.

The second reason Illinois courts refuse to recognize social host liability is that the courts are unwilling to expand the dram shop act to include gratuitous suppliers. The courts' refusal to impose dram shop liability to social hosts seems correct. The Act only applies to those persons engaged in the business of selling alcoholic beverages.[66] The Act does not preempt the field of civil liability for social hosts, however, because the Act does not mention noncommercial vendors.[67]

The most recent Illinois decisions refusing to allow social host liability have generally deferred to the state legislature to determine whether liability should be imposed.[68] The Illinois courts' complacency is inconsistent with the court's traditional function of defining the scope of negligence.[69] Illinois courts have previously held that it is a function of the judiciary to establish rules consonant with present concepts of justice.[70]

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63. Alvis v. Ribar, 85 Ill. 2d 1, 421 N.E.2d 886 (1981); Molitor v. Keneland, 18 Ill. 2d 11, 26, 163 N.E.2d 89, 102 (1959) (need for stability in law must not obscure changing needs of society or veil injustice resulting from doctrine in need of reevaluation).

64. The two most recent social host cases in Illinois, Lowe v. Rubin, 98 Ill. App. 3d 496, 424 N.E.2d 710 (1981), and Miller v. Moran, 96 Ill. App. 3d 596, 421 N.E.2d 1046 (1981), both relied on the 1889 decision of Cruse v. Aden, 127 Ill. 231, 20 N.E. 73 (1889), when denying liability.

65. *See supra* note 5.

66. Illinois courts have consistently interpreted the Act as applying only to commercial vendors. *See supra* note 59.

67. *See, e.g.*, Ross v. Ross, 294 Minn. 115, 200 N.W.2d 149 (1972) (court found Minnesota Dram Shop did not preempt social host liability because Act silent on whether hosts covered).

68. *See supra* note 60.

69. *See, e.g.*, Palsgraf v. Long Island Railroad Co., 248 N.Y. 339, 162 N.E. 99 (1928) (defining scope of duty). *See generally* R. KEETON, LEGAL CAUSE IN THE LAW OF TORTS § 250 (1979) (courts define scope of negligence).

As a Pennsylvania Supreme Court justice stated:

> I hasten to add that in my view there is no reason in the nature of things why a private person should not be held liable if he serves liquor to one whom he knows or should know to be intoxicated, and who he knows or should know is about to drive an automobile or engage in some other activity involving the potentiality of harm to himself or to others, with resulting damage. No legislative enactment is required to accomplish that result; it is ordinary tort law.

Manning v. Andy, 454 Pa. 237, 239, 310 A.2d 75, 77 (1973) (Pomeroy J., concurring).

70. The Illinois Supreme Court in Alvis v. Ribar, 85 Ill. 2d 1, 12, 421 N.E.2d 886, 896 (1981) held that "it is the imperative duty of the court to repair injustice

Based on this concept of justice, Illinois' common law negligence rules have undergone radical changes in the past decade.[71] For example, the concept of comparative negligence, like social host liability, was once thought too radical a concept which would open up the "floodgates of litigation."[72] The Illinois Supreme Court held that any change from contributory negligence should derive from legislative action.[73] Recognizing the changing dictates of public policy, however, the Illinois Supreme Court soon reversed its holding.[74] The court found that the judiciary has a duty to reform laws in response to the demands of society.[75]

On numerous occasions, Illinois courts have recognized that archaic common law negligence rules often cause grave injustice. In these situations the courts have adopted contemporary doctrines sensitive to changing societal concerns.[76] In light of these continuing changes, it is irrational that the courts continue to ignore the plight of innocent automobile accident victims when a negligence analysis could be applied in order to avert such harm.

Supplying A Basis For Social Host Liability In Illinois

Although the Illinois courts have generally taken a hard line stance against social host liability a few cases have indicated a willingness to change. This intention was exhibited in a Seventh Circuit case which applied a contemporary proximate cause rationale. In *Waynick v. Chicago's Last Department Store*,[77] the Seventh Circuit rejected the traditional rule that consumption, rather than service of alcohol, is the proximate cause of injuries resulting from an inebriate's driving.[78] Similarly, in *Colligan v. Cousar*,[79] an Illinois appel-

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and reform the law to be responsive to the demands of society."

71. *See* Coney v. J.L.G. Industries, Inc., 97 Ill. 2d 104, 454 N.E.2d 197 (1983) (merged contributory negligence and assumption of risk into form of comparative negligence used to offset liability in tort for a defective product); Alvis v. Ribar, 85 Ill. 2d 1, 421 N.E.2d 886 (1981) (abolished doctrine of contributory negligence); Skinner v. Reed-Prentice, Co., 70 Ill. 2d 1, 374 N.E.2d 437 (1977) (recognized contribution among joint tort-feasors, furthering recognition of concurrent proximate cause and comparative negligence).

72. Maki v. Frelk, 40 Ill. 2d 193, 239 N.E.2d 445 (1968) (adoption of comparative negligence would "open floodgates of litigation").

73. *Id.* at 196, 239 N.E.2d at 447.

74. In *Alvis*, the Illinois Supreme Court expressly overruled the *Maki* decision. *Alvis*, 85 Ill. 2d at 12, 421 N.E.2d at 897.

75. *Id.*

76. *See supra* note 70.

77. 269 F.2d 322 (7th Cir. 1959).

78. *Id.* The cause of action in *Waynick* was based on a violation of Illinois' Liquor Control Act, Ill. Rev. Stat. ch. 43, § 131 (1985). In *Waynick*, the defendant, tavern owner, sold liquor to intoxicated persons who later drove into Michigan where they caused an accident. The court held that neither states' dram shop act applied. *Waynick*, 269 F.2d at 325. The court then applied a traditional common law analysis and found that because it was foreseeable that the defendant could injure another

late court held that under an analysis of modern Illinois negligence law the serving of alcohol is the proximate cause of injuries to a plaintiff involved in a collision with a drunken driver.[80] In *Colligan*, an Illinois tavern operator sold liquor to an intoxicated individual who later drove across the Indiana border and collided with the plaintiff's automobile. The court held that Illinois' Dram Shop Act[81] did not apply because the accident occurred in Indiana.[82] Because Illinois had no recent law on point, the *Colligan* court examined other state court decisions that had confronted the issue. The court concluded that under a modern analysis of Illinois' negligence law, the serving of alcohol is the proximate cause of the plaintiff's injuries.[83]

The reasoning applied in *Colligan* was also applied in the Illinois case of *Tadey v. Estate of Doe*.[84] In *Tadey*, a group of friends gathered at a teenage host's home to drink beer and smoke marijuana. Later that evening, one of the guests left the party in his car with the host as his passenger. The youths then collided with the plaintiff's vehicle. Both the driver and passenger were killed, while the plaintiff suffered severe injuries.[85] The plaintiff filed a negligence suit against the estate of the teenage host. The plaintiff contended that the host was negligent in permitting his guest to drink alcohol and smoke marijuana because he knew the guest would be operating a motor vehicle later that night. The jury found for the plaintiff and against the estate of the teenage host.

These cases demonstrate dissatisfaction with the current status of social host liability in Illinois. More importantly, the reasoning

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motorist, the defendant's negligent dispensing of liquor was the proximate cause of the plaintiffs injuries. *Id.* at 327.

79. 38 Ill. App. 2d 392, 187 N.E.2d 292 (1963).

80. *Id.*

81. ILL. REV. STAT. ch. 43, § 135 (1985).

82. *Colligan*, 38 Ill. App. 2d at 400, 187 N.E.2d at 296. In Graham v. General U.S. Grant Post No. 2665, V.F.W., 43 Ill. 2d 7, 248 N.E.2d 657 (1969), the court upheld the doctrine of *lex loci delecti*, the law of the place where the tort occurred applies. In *Graham*, the Illinois Supreme Court did not apply the Illinois Dram Shop Act extraterritorially, and Wisconsin's common law allowed no recovery against an Illinois tavern operator. *Id.*

The *Colligan* court noted that if the Illinois Dram Shop Act had been applicable, the tavern operator would not at the same time be liable under the common law. *Colligan*, 38 Ill. App. 2d at 395, 187 N.E.2d at 296. This statutory preemption was upheld in Cunningham v. Brown, 22 Ill. 2d 23, 174, N.E.2d 153 (1961), where the court held that the Dram Shop Act barred common law recovery.

83. *Colligan*, 38 Ill. App. 2d at 395, 187 N.E.2d at 295. The court emphasized the foreseeable consequences of allowing a person to become intoxicated, knowing he would be driving. *Id.*

84. Tadey v. Estate of Doe, No. 1:W73G, 1118L (Cir. Ct. Will Cty. Ill. 1972). *See also* Stanner, *Liability of Social Host for Off Premises Negligence of an Inebriated Guest*, 68 ILL. B.J. 396, 397 (1980).

85. *Id.* The case was later settled and was not appealed.

enunciated in these cases provides the foundation for imposing social host liability in the future. Many of these reasons should persuade Illinois courts to adopt social host liability.

One such argument in favor of adopting social host liability is the fact that Illinois does not have a comprehensive automobile insurance program to fully compensate injured parties. Automobile insurance in Illinois is not mandatory.[86] Insurance is required only after a driver is involved in two accidents.[87] It is not difficult to imagine two uninsured motorists involved in the same automobile accident. If the inebriate was at fault the resulting financial burden will rest on the innocent party. Recognizing social host liability will give the blameless uninsured individual a source from which to seek recovery for injuries. The social host, on the other hand, generally carries homeowner's insurance.[88] Though the burden on a homeowner to keep a guest from becoming intoxicated may be inconvenient, it is not disproportionate to the injuries or loss of life of one who is totally innocent of any wrongdoing.

Premising Liability on Illinois' Liquor Control Act

The Illinois Liquor Control Act should provide the basis for a negligence suit against a social host who furnishes liquor to a minor. The statute is an appropriate vehicle for imposing liability for three reasons. First, gratuitous suppliers of liquor are included within the purview of the statute.[89] Second, the risk of harm to such plaintiffs is the type of risk that the statute was designed to prevent.[90] Third, the plaintiffs' who are injured are within the class of persons that the statute protects.[91]

A literal reading of the Act indicates that the Illinois legislature intended gratuitous suppliers to be included in the statute. Section

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86. ILL. REV. STAT. ch. 73, § 990 (1985).

87. ILL. REV. STAT. ch. 95½, § 8-102 (1985).

88. In Kelly v. Gwinell, 96 N.J. 538, 476 A.2d 1219 (1984), the social host's homeowners insurance paid $72,500 to the injured plaintiff. *Drunk Driving*, IBIS REP., August 1985, at 15 (available at The John Marshall Law School, Law Review Office). However, at least one insurance company claims it would resist payment because the act of serving excessive amounts of liquor to a guest was "intentional." Telephone interview with Cleveland Tyson, Attorney for Allstate Insurance (Sept. 5, 1985). Allstate's homeowners insurance policy states that the policy does not cover bodily injury or property damage arising from the loaning or entrusting of motorized vehicles. ALLSTATE DELUXE HOMEOWNERS POLICY 16 (1985). The policy does not mention negligent acts of an inebriated guest. *Id.* Because Illinois courts construed insurance contracts most favorable to the insured, Simmons Co. v. Royal-Globe Ins. Co., 543 F.2d 1195 (7th Cir. 1976), the typical homeowners policy would cover a social host. *See also* LaSalle Nat'l Bank of Chicago v. American Ins. Co., 14 Ill. App. 3d 1027, 303 N.E.2d 770 (1973) (interpret policy to favor insured).

89. *See infra* notes 92-94.

90. *See infra* notes 95-97 and accompanying text.

91. *See infra* notes 98-103 and accompanying text.

131(a) stipulates that any "person" who "gives" or "delivers" alcohol to a minor is guilty of a misdemeanor.[92] The legislature deliberately used the words "person" in conjunction with "gives" to include both commercial and noncommercial suppliers of intoxicants.[93] Evidence of this legislative intent is also found in the contrasting language of other sections of the same statute that refer to "licensees" who "sell" liquor.[94]

The second reason the Illinois Liquor Control Act should operate as a basis for imposing civil liability on social hosts is that the harm that a third party incurs is the same harm the statute was designed to prevent.[95] The Illinois legislature purposely set the legal drinking age in Illinois at twenty-one.[96] In doing so, the legislature determined that persons under twenty-one do not act responsibly after consuming intoxicants.[97] The statute was designed to prevent the risk of harm juveniles pose when intoxicated.

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92. ILL. REV. STAT. ch. 43, § 131(a) (1985).

93. The legislature's intent of including social hosts is derived from the words of the Act itself. The first and most important aid to the ascertainment of legislative intention is the words employed. People *ex rel.* Gibson v. Cannon, 65 Ill. 2d 366, 357 N.E.2d 1180 (1976). Further, only where the language used by the legislature is vague, ambiguous or uncertain will the court seek the aid of any admissible considerations in discovering the intended meaning. Certain Taxpayers v. Sheahen, 45 Ill. 2d 75, 256 N.E.2d 758 (1970). The language of the Liquor Control Act is not ambiguous or uncertain. The legislature specifically referred to any person who gives liquor to a minor. As further support, other courts have construed these broadly worded liquor control statutes as imposing liability on gratuitous suppliers. *See* Giordina v. Soloman, 360 F. Supp. 262 (M.D. Pa. 1973) ("any person" who "gives"); Coulter v. Superior Court, 21 Cal. 3d 144, 577 P.2d 699, 145 Cal. Rptr. 543 (1978) (any "person" who "gives" liquor to minor); Ashlock v. Norris, 120 Ind. App. 281, 475 N.E.2d 1167 (1985) ("no person" shall "give"); Clark v. Mincks, 364 N.W.2d 226 (Iowa 1985) ("no person" shall "give"); Romeo v. Van Otterloo, 117 Mich. App. 333, 323 N.W.2d 47 (employer is "person" under statute). For a discussion of a statutory interpretation of "any person," see Note, *The Torts of the Intoxicated: Who Should be Liable?*, 15 COLUM. J.L. & SOC. PROBS. 33, 36-40 (1979) (should be given literal interpretation).

94. ILL. REV. STAT. ch. 43, § 131(a) (1985), provides that "[n]o licensee nor any officer, associate, member, representative, agent or employee of such licensee shall sell, give or deliver alcoholic liquor to any person under the age of 21 years. . . ."

95. Under Illinois law, the plaintiff must show that the harm suffered by him was the same harm the statute was designed to prevent. Galayda v. Penman, 80 Ill. App. 3d 423, 399 N.E.2d 656 (1980). *See also* Richardson v. Dunbar, 95 Ill. App. 3d 254, 419 N.E.2d 1205 (1981) (violation of statute negligence if statute prescribes duty for protection and safety of persons and property).

96. ILL. REV. STAT. ch. 43, § 131 (1985), raised the drinking age in Illinois to 21 years.

97. When debating on whether to raise the drinking age in Illinois to 21, Representative Ryan stated, "it has been clearly shown that those under 21 are not mature enough to handle alcohol." 81st General Assembly, House of Representatives (transcript of floor debate, Mar. 4, 1979) at 19 (statement of Rep. Ryan). Representative Yourell also noted that the typical death in Illinois was a drunk teenager involved in an automobile accident. 81st General Assembly, House of Representatives (transcript of floor debate, Apr. 4, 1979) at 601 (statement of Rep. Yourell). Representative Yourell also stated that "[n]ot only have the teenagers been killed, but innocent victims have been killed." *Id.*

Further, the statute was designed to protect persons injured by drunken minor drivers. The view that the legislature intended to guard the general public against a drunken minor's negligent acts was upheld in *Waynick v. Chicago's Last Department Store.*[98] In *Waynick*, the court interpreted the Illinois Liquor Control Act as protecting "any member of the public who might be injured or damaged as a result of the drunkenness to which a particular sale [or gift] of alcoholic liquor contributes."[99] The idea that the liquor control act was designed to protect the general public is reiterated in section 94 of the Act which provides that section 131 should be liberally construed to protect the "safety and welfare of the People of the State of Illinois. . . ."[100]

Section 131(c) of the Act also supports the theory of imposing liability on social hosts for the negligent acts of a drunken minor.[101] Under section 131(c), a host who permits a gathering of two or more persons at a residence is guilty of a crime if: 1) the host knows that any person under eighteen years of age is in possession of alcohol; and 2) the host knows that the minor leaves the premises in an intoxicated condition.[102]

This section may prove to be a more acceptable alternative for a court to use when imposing liability on a social host than imposing liability under section 131(a). Under section 131(c), the plaintiff has the added burden of showing that the host had knowledge of both the minor's intoxication and of the minor's departing in an inebriated condition. The requirement of proving these two scienter elements may overcome the courts' reluctance to extend liability in social host cases.[103] The second basis for imposing social host liability in Illinois can be premised on a traditional negligence analysis.

Premising Liability on Traditional Negligence Principles

A common law negligence action is an appropriate basis for extending liability to a social host because it places liability upon the

98. 269 F.2d 322 (7th Cir. 1959).

99. *Id.* at 328.

100. ILL. REV. STAT. ch. 43, § 94 (1985) states: "This Act shall be liberally construed, to the end that the health, safety and welfare of the People of the State of Illinois shall be protected and temperance in the consumption of alcoholic liquors shall be fostered. . . ."

101. ILL. REV. STAT. ch. 43, § 131(c) (1985).

102. *Id.*

103. Liability for furnishing controlled substances to a guest who is later involved in an automobile accident can also be premised on a statutory violation. ILL. REV. STAT. ch. 38, § 37-1 (1985), provides that any building used in the commission of certain offenses, including smoking marijuana, may be declared a public nuisance. ILL. REV. STAT. ch. 38, § 37-2 (1985), states that a lien exists on property intentionally, recklessly or negligently used as a public nuisance for the benefit of any person injured.

person in a position to prevent a driver's negligence. In order to hold a social host liable, the plaintiff would have to establish the elements of a traditional negligence cause of action. The plaintiff would have to prove duty, breach of duty and causation.[104]

In determining whether a duty exists, a court draws judicial lines based on fairness and public policy.[105] Illinois courts have held that duty is premised on the foreseeability of the accident and a weighing of public policy considerations.[106] Foreseeability is present in social host cases because the host is presumed to have the knowledge of a reasonable person in society.[107] A reasonable person could foresee that an intoxicated driver could cause an automobile collision.[108]

Public policy also justifies imposing a duty upon hosts. Drunken drivers cause thousands of deaths each year.[109] Because the number

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104. *See* Securities Fund Services, Inc. v. American National Bank and Trust Co., 542 F. Supp. 323 (N.D. Ill. 1982) (defining elements of negligence in Illinois).

Causation is divided into two categories: 1) actual causation, and 2) proximate causation. W. PROSSER, *supra* note 18, at 265. When analyzing actual causation, courts look to whether the accident would have occurred but for the defendant's conduct. McLaughlin, *Proximate Cause*, 39 HARV. L. REV. 149, 155 (1925).

Dean Prosser has defined proximate cause as "essentially a question of whether the law will extend the responsibility for the conduct and the consequences which have in fact occurred." W. PROSSER, HANDBOOK ON THE LAW OF TORTS § 42 (4th ed. 1971). He further states that "every question which arises in connection with 'proximate cause' [should be stated] in the form of a question: was the defendant under a duty to protect the plaintiff against the event which did in fact occur?" *Id.* For a further discussion of the judicial determination of duty and proximate cause, see generally L. GREEN, RATIONALE OF PROXIMATE CAUSE 269 (1927) (discussion of confusion between duty and causation); Bingham, *Some Suggestions Concerning Legal Cause at Common Law*, 9 COLUM. L. REV. 16 (1909) (discussion of proximate cause).

105. R. POLLACK, LAW OF TORTS 468 (13th ed. 1920). *See also* Kelly v. Gwinell, 96 N.J. 538, 542, 476 A.2d 1219, 1226 (1984) (duty imposed on social host based on foreseeability and public policy).

106. Hoffman v. Vernon, 97 Ill. App. 3d 721, 423 N.E.2d 519 (1981) (when imposing duty court balanced likelihood of injury, magnitude of guarding against it, and consequences of placing burden upon defendant); Johnson v. Chicago Housing Auth., 92 Ill. App. 3d 301, 416 N.E.2d 38 (1980) (public policy weighs heavily in determining duty). As one court noted:

> The first prime requisite to de-intoxicate one who has, because of alcohol, lost control over his reflexes, judgment and sense of responsibility to others, is to stop pouring alcohol to him. This is a duty which everyone owes to society and to law entirely apart from any statute.

Jardine v. Upper Darby Lodge, 413 Pa. 626, 630, 198 A.2d 550, 553 (1964).

107. *See* W. PROSSER, *supra* note 18, at 175 (every person expected to have knowledge of mythical responsible person).

108. The court in *Kelly*, found that "any person can foresee an intoxicated individual involved in an automobile accident." *Kelly*, 96 N.J. at 545, 476 A.2d at 1226.

109. Drunk driving causes 20,000 deaths a year, 670,000 injuries, 2.6 million work days lost, 2.5 million damaged vehicles and $24 billion in related costs. *Drunk Driving*, IBIS REP., August 1985, at 10 (available at The John Marshall Law School, Law Review Office). The National Highway Traffic Safety Administration estimates that 65 percent of all automobile accidents involve alcohol. *Id.* Reports also show that 30 percent of fatal automobile accidents caused by drunk drivers involve repeat offenders. *Id.* at 11. Every 21 minutes someone is killed by a drunk driver. If the pre-

of deaths is intolerable, Illinois has imposed strict criminal sanctions against drunk drivers.[110] The imposition of a duty on social hosts can only reduce the carnage that results when liquor and automobiles are mixed.[111] Thus, imposition of a duty in this context supports an overwhelming social goal—the reduction of drunken driving in an effort to save lives.

Imposing a duty on social hosts based on foreseeability and public policy considerations is analogous to the duty imposed on owners of vehicles who negligently entrust their cars to individuals known to be intoxicated.[112] Illinois courts have consistently held that a supplier who knew or should have known that the user will create an unreasonable risk of harm to others is liable for injuries caused to a third party.[113] This same rationale should apply when a host supplies liquor to a guest under circumstances where the host should reasonably foresee that the guest will drive in an inebriated condition. Given the great risk involved in driving while intoxicated,[114] any distinction between giving a car to a drunk, and giving a drink to a driver, pales into insignificance.

As further support for the argument that the social host has a duty to protect innocent third parties, a recent Illinois decision focused on the duty owed to innocent victims of automobile accidents.

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sent trend continues, half of all Americans will be involved in alcohol-related accidents in their lifetime. *Id.* at 13.

110. Ill. H.B. 1841, 1985 Ill. Laws 2051, signed by Governor Thompson in September 1985, increases penalties for drivers refusing to take chemical sobriety tests. In addition, Governor Thompson stated that "I believe there are additional measures which should be taken that are consistent with the goals of this bill." Daily Law Bulletin, Sept. 28, 1985, at 1, col. 5. Illinois courts have also taken a tough stand against drunk drivers as evidenced by their imposition of punitive damages against an intoxicated driver who causes injury to another. *See* Madison v. Wigal, 18 Ill. App. 2d 564, 153 N.E.2d 90 (1958) (punitive damage award upheld). *See generally* Winter, *States Get Tougher on Drunk Drivers*, 68 A.B.A. J. 140 (1982) (discussion of Illinois' severe sanctions).

111. The court in Kelly v. Gwinell, 96 N.J. 538, 546, 476 A.2d 1219, 1223 (1984), found that imposing liability on social hosts can only have a positive effect on reducing accidents caused by drunk driving.

112. *See, e.g.*, Heldt v. Brei, 118 Ill. App. 3d 798, 455 N.E.2d 842 (1983) (owner of vehicle has duty to protect third party injured by owner's negligent entrustment); Bohnen v. Wingereid, 80 Ill. App. 3d 232, 398 N.E.2d 1204 (1979) (duty and proximate cause satisfied because injury foreseeable).

Section 371 of the Restatement of Torts, RESTATEMENT (SECOND) OF TORTS § 371 (1977), provides additional support for the imposition of a duty. Section 371 states that a possessor of land is subject to liability for harm to others outside of the land caused by an activity which he realizes or should realize will involve unreasonable harm to others. *Id.* In a host situation, the host should realize that a guest's drunken driving may cause an unreasonable risk to motorists.

113. Dryeson v. Hughes, 333 Ill. App. 298, 76 N.E.2d 809 (1948) (owner should have foreseen negligent driving); Bensman v. Reed, 299 Ill. App. 531, 20 N.E.2d 910 (1939) (negligence foreseeable).

114. *See supra* note 109.

In *Kirk v. Michael Reese Hospital*,[115] an Illinois appellate court held that doctors, hospitals, and drug manufacturers owe a duty of care to third parties that a recently discharged patient injured. While in the hospital, the patient consumed prescribed drugs. After the patient was discharged, he drank alcohol which, when combined with his medication, further diminished his driving ability. Later, the patient was involved in an accident seriously injuring his passenger. The passenger filed a negligence action naming, among others, the health care professionals who prescribed the driver's medication. The court found that the doctors and other defendants could have foreseen that their failure to adequately warn the driver of the adverse effects of the drugs would result in injury to the plaintiff or other members of the general public.[116]

The *Kirk* court rejected the defendants' contentions that the driver's consumption of alcohol and negligent driving were superseding intervening causes.[117] The court relied on public policy considerations and found that the imposition of a duty was needed to protect the innocent victims of automobile collisions. The *Kirk* court stated that "[t]he wrongful acts must be curtailed, not the rights of the victims of wrongful actions."[118]

Once a duty is established, showing that the host served alcohol to a guest knowing the guest would be operating a motor vehicle will provide a breach of that duty.[119] When a host serves an inebriate, the host knows that he is creating an unreasonable risk of harm to innocent third parties.[120] Both the risk and resulting injury are reasonably foreseeable. To establish the element of actual causation, a plaintiff must show that the accident would not have occurred but for the host's negligent service.[121] Proximate cause is present because the host could foresee the guest's negligent driving. The guest's negligence, then, is not an intervening cause extinguishing

115. Kirk v. Michael Reese Hosp., 136 Ill. App. 3d 945, 483 N.E.2d 906 (1985).
116. *Id.*
117. *Id.*
118. *Id.* at 954, 483 N.E.2d at 912.
119. A breach of duty occurs when the defendant does not act as a reasonable person would. Illinois courts have held that a reasonable person could conclude that an inebriate will cause an automobile accident. *See* Rosenberg v. Packerland, 55 Ill. App. 3d 959, 370 N.E.2d 910 (1939) (recognized that automobile driven by drunk was potentially dangerous). Therefore, the host is not acting reasonably when he serves a guest excessive amounts of alcohol, knowing the guest will be driving.
120. As the court in Rapport v. Nichols, 31 N.J. 188, 156 A.2d 1 (1959), stated:
> 'the act of serving liquor to an intoxicated person known to be driving creates an unreasonable risk of harm to members of the traveling public and may readily be recognized and foreseen;' this is particularly evident in current times when traveling by car is so common and accidents resulting from drinking are so frequent.

Id. at 191, 156 A.2d at 5.
121. For a discussion of actual causation, see *supra* note 104.

liability for the host's negligent service.[122]

Implementation of Social Host Liability

The author does not advocate a blanket policy of host liability. Each case should be decided on its own merits, and the jury given adequate leeway to decide liability. The author does suggest that liability be based on the violation of Illinois' Liquor Control Act. Both sections 131(a) and 131(c) supply the criterion for a negligence suit when a host serves a youth later involved in a motor vehicle collision.[123]

Further, the courts should extend section 131(a) to impose liability on social hosts who serve obviously intoxicated adults or habitual drunkards. From the title of the Act the courts can imply that the legislature classified minors, intoxicated adults, and habitual drunkards as persons unable to handle the effects of alcohol.[124] Therefore, the same rationale for imposing liability on those who serve minors can be applied to hosts who serve intoxicated adults and habitual drunkards.

The judiciary should reach the same conclusion a recent Georgia court did when imposing social host liability under a liquor control statute.[125] Though the Georgia case dealt with a minor, the court cited *Kelly v. Gwinell*[126] with approval and refused to rule out an extension of the liquor control act to adults. If, however, the judiciary finds this interpretation inconsistent with its judicial function, the legislature should amend the body of section 131(a) to coincide with the intention expressed in the title of the liquor control act.

The author also suggests that the judiciary should modify traditional negligence analysis in order to establish the existence of a duty in social host cases.[127] A duty, extending from hosts to injured third parties, is consistent with both the foreseeability doctrine and public policy rationale.[128] Moreover, a three part test should be implemented to determine whether the standard of reasonable care has been breached. To be liable for the negligent driving of a guest, the plaintiff would have to prove that the host: 1) directly served the

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122. Before an intervening force will relieve a defendant from liability for his wrongful conduct, the intervening force must itself be outside the range of reasonable anticipation as a consequence of the defendant's wrongful act. Wright v. General Motors Corp., 479 F.2d 52 (7th Cir. 1973). *See also* Davis v. Marathon Oil Co., 64 Ill. 2d 380, 356 N.E.2d 93 (1976) (defendant liable if intervening act foreseeable).

123. Ill. Rev. Stat. ch. 43, §§ 131(a), (c) (1985).

124. Ill. Rev. Stat. ch. 43, § 131 (1985).

125. Sutter v. Hutchings, 254 Ga. 194, 327 S.E.2d 716 (1985).

126. *Kelly*, 96 N.J. at 538, 476 A.2d at 1219.

127. *See supra* notes 89-103 and accompanying text.

128. *See supra* notes 104-118 and accompanying text.

guest with knowledge that, 2) the guest was intoxicated, and 3) will thereafter be operating a motor vehicle. A plaintiff suing under these *prima facie* elements has a stringent burden of proof. The plaintiff must prove two scienter requirements: knowledge of the intoxication; and knowledge that the guest will be operating a motor vehicle. This test provides adequate safeguards against frivolous claims. Recovery will be denied in situations where there are parties with many guests, when guests serve each other, when a host is busy with other responsibilities and is not serving the liquor or when the host is drunk.[129] Although this places a significant burden on the host to take some precautions for the guest's intoxication, it is not too high when compared with the damage a drunken driver often inflicts on innocent victims.[130]

Conclusion

Illinois should recognize the rights of injured parties to seek compensation for their losses arising from a defendant's negligence in furnishing liquor to those who are unable to handle its effects. Social host liability should be based on either the violation of the Liquor Control Act or on traditional negligence principles. Plaintiffs must be allowed a cause of action in state courts to discourage drunk driving and the ensuing carnage that results when automobiles and liquor are combined. Only by recognizing one of these causes of action can innocent victims be protected against the death and destruction of intoxicated drivers like Mary Jones.

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129. *See* Kelly v. Gwinell, 96 N.J. 538, 476 A.2d 1219 (1984).

130. The author suggests that the host can drive the guest home or arrange for a ride.