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NOTE

THE RECOGNITION OF SOCIAL HOST LIABILITY IN NORTH CAROLINA—Hart v. Ivey

INTRODUCTION

The concept of social host liability for the acts of intoxicated guests is more than a century old. However, because providing alcoholic beverages to an able-bodied man was not a tort at common law, recovery against the host who supplied the alcohol could only be had under statute for one injured by an intoxicated guest. Courts and legislatures have been slow to impose liability on social hosts, the actual imposition of such liability being a relatively new development. Although a trend toward imposing social host liability is emerging, courts have utilized a myriad of legal theories in recognizing the cause of action. In Hart v. Ivey, the North Carolina Supreme Court announced its decision to join the current

1. For purposes of this Note, “social host” is defined as one who gratuitously provides alcoholic beverages and who is not a commercial vendor of alcoholic beverages.
2. Cruse v. Aden, 20 N.E. 73 (Ill. 1889) (declining to impose liability on social host who provided alcohol to guest who died after being thrown from his horse while intoxicated).
4. 45 AM. JUR. 2d Intoxicating Liquors § 554 (1969) (historically such statutes have limited liability to commercial vendors).

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trend and to impose civil liability on a social host for the injuries caused by his intoxicated guests.10 Prior to Hart v. Ivey, North Carolina courts had refused to recognize the liability of social hosts as a possible cause of action,11 insisting that such recognition belonged in the realm of the legislature.12 Departing from its prior policy, the North Carolina Supreme Court recognized social host liability under common law negligence principles in Hart v. Ivey, holding that a social host is liable when he provides an alcoholic beverage to an underage social guest who then drives while impaired and injures a third party in an automobile collision.13

This Note will first trace the development of social host liability in North Carolina and in other jurisdictions. Second, the Note will list the positions on social host liability adopted by other jurisdictions. Finally, this Note will analyze the Hart decision by explaining the disagreement between the North Carolina Court of Appeals and the North Carolina Supreme Court on the rationale to be employed, and by noting how the stage is now set for further expansion of social host liability.

THE CASE

In Hart v. Ivey,14 the plaintiffs Sandra and Roger Hart asked the North Carolina Supreme Court to recognize a cause of action under a common law theory of negligence where a social host provided alcohol to an underage guest who subsequently injured the plaintiffs while driving a motor vehicle while impaired.15 The defendants hosted a party, charging all male guests two dollars ($2.00) to drink beer.16 One of the defendant's guests drank alcohol at the party and became impaired.17 All of the social hosts and the guest were aged eighteen which is under the legal age for possessing and consuming alcohol in North Carolina.18 The guest left the party driving an automobile while still impaired.19 On his way home, the guest drove the automobile across the double yellow line

10. Id.
12. Id.
15. Id. at 302, 420 S.E.2d at 176.
17. Id.
18. Id.
19. Id.
and collided into plaintiff's oncoming automobile, causing severe injuries to her. Plaintiff's father claimed damages for loss of consortium.

The Plaintiffs alleged that the social host defendants who provided alcohol to an underage guest were liable for the injuries inflicted by that underage guest's impaired driving under two theories: (1) negligence per se due to violating N.C. GEN. STAT. § 18B-302 (1983) which prohibits aiding an underage person purchase or possess alcoholic beverages; and (2) common law negligence. The trial court granted defendants' motion to dismiss. The North Carolina Court of Appeals reversed, holding that plaintiffs' complaint stated a cause of action under the negligence per se theory, but not under the common law negligence theory. The court reasoned that N.C. GEN. STAT. § 18B-302 (1983) is a public safety statute, designed for "the protection of the community at large from the injurious consequences of contact with an intoxicated person." The court held that a public safety statute imposes a specific duty for the protection of others upon a person, and the violation of such a statute is negligence per se. The North Carolina Supreme Court heard defendant's appeal as of right and granted plaintiffs' petition for discretionary review of the claim under the common law negligence theory. The North Carolina Supreme Court affirmed the appellate decision on different grounds. The court disagreed with the North Carolina Court of Appeals on the negligence per se theory, finding that "there is no express purpose of protecting the public from intoxicated persons" in N.C. GEN. STAT. §18B-302 (1983). However, the North Carolina Supreme Court found for the plaintiffs, holding that plaintiffs asserted a cause of action under common law negligence principles, recognizing for the first time in North Carolina the liability of a

20. Id.
21. Hart, 332 N.C. at 300, 420 S.E.2d at 175.
22. Hart, 102 N.C. App. at 586, 403 S.E.2d at 917.
23. Hart, 332 N.C. at 301, 420 S.E.2d at 175.
24. Id., 420 S.E.2d at 175-76.
25. Hart, 102 N.C. App. at 590, 403 S.E.2d at 919 (quoting Hutchens v. Hankins, 63 N.C. App. 1, 16, 303 S.E.2d 584, 593 (1983)).
26. Id. at 591, 403 S.E.2d at 920.
27. Id.
29. Id. at 306, 420 S.E.2d at 178.
30. Id. at 304, 420 S.E.2d at 177.
31. Id.
social host for the injuries inflicted by his social guest who drove while impaired.32

BACKGROUND

A. Development of Social Host Liability in North Carolina

Prior to Hart v. Ivey, the North Carolina statutes and case law were devoid of any basis for imposing social host liability.33 The imposition of social host liability had been urged on the courts prior to Hart, but the courts did not feel compelled to recognize such a cause of action.34 However, as the social climate changed and the policy toward governing alcohol use tightened,35 the courts responded by imposing liability on alcohol providers other than social hosts, for the torts of their intoxicated consumers.36

In Chastain v. Litton Systems, Inc.,37 the Fourth Circuit Court of Appeals, applying North Carolina negligence principles, recognized possible liability on the part of an employer who provided alcohol to its employees who then drove while intoxicated, injuring a third party.38 The court was quick to point out that Litton, the employer, was not a purely social host because it was not simply entertaining its employees, but was furthering a business purpose by improving working relationships.39 Because Litton was not acting as a social host, thus precluding the motion for summary judgment, Litton’s actions were governed by North Carolina tort law. Under common law negligence principles, one is negligent if “a person of ordinary prudence could have reasonably foreseen

32. Id.
37. 694 F.2d 957 (4th Cir. 1982).
38. Id. at 960.
39. Id.
that such a result, or some similar injurious result, was probable under the facts as they existed." Therefore, a jury could find, that "Litton was negligent if it failed to exercise ordinary care in furnishing, or permitting its employees to furnish, alcoholic beverages to [the employee] knowing that he had become intoxicated."

The North Carolina Court of Appeals announced in *Hutchens v. Hankins* that a commercial vendor can be held liable for the torts of his intoxicated customer if the customer was sold alcoholic beverages while intoxicated. The court noted that commercial vendors are prohibited by statute from selling alcoholic beverages to one whom the vendor knows or should know is in an intoxicated condition. The court found that the general purposes of the statute were to protect "the customer from the adverse consequences of intoxication" and to protect "the community from the possible injurious consequences of contact with the intoxicated person." The court concluded that a jury could find the vendor negligent since the statute imposed a duty furthering public safety and violation of a public safety statute is a per se violation of that duty.

Applying similar reasoning in *Freeman v. Finney*, the North Carolina Court of Appeals again extended vendor liability. In the *Freeman* case, the vendor had sold beer to minors in violation of a N.C. Gen. Stat. § 18A-8 which makes it a crime for any person to knowingly sell or give malt beverages to any person under eighteen years of age. The minors drank the beer, became intoxicated, drove a car, and fatally injured a third party in a head-on collision. The vendor was under a statutory duty not to sell alcohol to minors so as to protect the minors as well as to protect the public from the minors. By breaching the statutory duty, the vendor created an unreasonable risk of harm, and was negligent per se. The court expressed its readiness to impose liability for automobile

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40. Id. at 961.
41. Id. at 962.
42. 63 N.C. App. 1, 303 S.E.2d 584 (1983).
43. Id.
45. Id. at 16, 303 S.E.2d at 593.
46. Id.
47. 65 N.C. App. 526, 309 S.E.2d 531 (1983).
48. Id. at 528, 309 S.E.2d at 532.
49. Id. at 527, 309 S.E.2d at 531.
50. Id.
51. Id.
accidents caused by the negligence of intoxicated minors on the vendors from whom the minors purchased alcohol.\(^{52}\)

B. Development of Common Law Negligence Social Host Liability In Other Jurisdictions

The Oregon Supreme Court was the first court to impose social host liability in *Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*,\(^{53}\) a case in which a college fraternity hosted a party and served alcohol to its guests. According to the court the fraternity had reason to know that many of its guests would be minors and that some of its guests would drive home after the party.\(^{54}\) The plaintiff, a passenger in a car driven by a minor who had become intoxicated at the party, was injured when the car collided with a building.\(^{55}\) The Oregon Supreme Court found that the fraternity, due to its status as host of the party, had a duty based on common law negligence principles to refuse to serve alcohol to a guest when under the circumstances, such as the guest being a minor, it would be unreasonable to permit him to drink.\(^{56}\) By breaching its duty to the public to refrain from creating unreasonably dangerous situations, the fraternity became liable for the torts committed by its intoxicated minor guests.\(^{57}\)

Seven years later the California Supreme Court addressed the issue of social host liability in *Coulter v. Superior Court*.\(^{58}\) The plaintiff in *Coulter* brought an action against the owner and manager of an apartment complex who served excessive amounts of alcohol to an individual who then left the apartment complex intoxicated.\(^{59}\) The individual subsequently injured the plaintiff in an automobile collision.\(^{60}\) The California Supreme Court noted that it had long been a principle of law that a person is liable for the foreseeable injuries caused by his failure to exercise reasonable care.\(^{61}\) Applying this principle of common law, the California Supreme Court reasoned that one who serves alcoholic beverages to an obvi-

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52. *Id.* at 532, 309 S.E.2d at 533.
53. 485 P.2d 18 (Or. 1971).
54. *Id.* at 20.
55. *Id.*
56. *Id.* at 23.
57. *Id.*
58. 577 P.2d 669 (Cal. 1978).
59. *Id.*
60. *Id.*
61. *Id.* at 674.
ously intoxicated person knowing that the intoxicated person intends to drive a car creates a reasonably foreseeable risk of injury to others on the highway, thus failing to exercise reasonable care. Therefore, the social host who provides the alcohol is liable for foreseeable injuries caused by the intoxicated guest. Immediately after the California Supreme Court issued this opinion, the California Legislature reacted by passing a statute abrogating the holding in Coulter.

The highest court in New Jersey again tested the waters of social host liability when it extended the liability of the social host for the torts of his intoxicated adult guest in Kelly v. Gwinnell. In Kelly, defendant Donald Gwinnell, after driving defendant Joseph Zak home, spent an hour or so at Zak’s home having a few drinks with Zak before returning home. Zak had walked Gwinnell back to his car and watched him drive away. Instead of reaching home safely, however, Gwinnell caused a head-on collision with plaintiff Marie Kelly who was seriously injured. The court found significant that Gwinnell’s blood alcohol level of 0.286 percent, almost three times the level necessary to find one guilty of driving under the influence of alcohol. The court insisted that anyone with such a high blood alcohol level would have been visibly intoxicated. The New Jersey Supreme Court held that a social host who provides intoxicating liquor to an adult guest, knowing that the guest is intoxicated and knowing that the guest will soon drive,

62. In contrast to the intoxicated person in the Wiener case, the intoxicated person referred to in the Coulter case was an adult.
63. Coulter, 577 P.2d at 674.
64. Id. at 675-76.
65. CAL. BUS. & PROF. CODE § 25602(c) (West Supp. 1982). The text of the provision provides:

The legislature hereby declares that this section shall be interpreted so that the holding in . . . Coulter v. Superior Court, 21 Cal. 3d 144, 577 P.2d 669, 145 Cal. Rptr. 534 (1978) be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages as the proximate cause of injuries inflicted upon another be an intoxicated person.
67. Id. at 1220.
68. Id.
69. Id.
70. Id. Under N.J.S.A. § 39:4-50 (1983), anyone who drives with a blood alcohol concentration of 0.10 or more is guilty of driving while under the influence of intoxicating liquor.
is liable for injuries inflicted on a third party as a result of the negligent operation of a motor vehicle by the guest if that negligence is caused by the intoxication.\textsuperscript{72}

The New Jersey Supreme Court in \textit{Kelly} based the liability of the social host on common law negligence principles. The court started with the principle that "negligence is tested by whether the reasonably prudent person at the time and place should recognize and foresee an unreasonable risk or likelihood of harm or danger to others."\textsuperscript{73} The court added that a "tortfeasor is generally held answerable for the injuries which result in the ordinary course of events from his negligence and it is generally sufficient if his negligent conduct was a substantial factor in bringing about the injuries."\textsuperscript{74} Applying the facts of the case to these principles, the court found that a reasonable person in Zak's position could foresee that continuing to serve alcohol to Gwinnell created an unreasonable risk that Gwinnell would likely injure someone as a result of negligent operation of his car.\textsuperscript{75} The court then asked whether it should impose a duty to prevent such risks.\textsuperscript{76} Insisting that something "more" such as some value judgment was needed to impose a duty, the court supplied the value judgment by citing the current social goals of reducing drunk driving and compensating innocent victims of drunk drivers.\textsuperscript{77} The New Jersey Supreme Court recognized the duty and held the host-tortfeasor answerable for the resulting injuries.

Despite predictions\textsuperscript{78} that the New Jersey legislature would abrogate the \textit{Kelly} decision as the California legislature did with \textit{Coulter},\textsuperscript{79} \textit{Kelly} remains good law almost ten years later. Rather than being a curiosity in New Jersey case law, the \textit{Kelly} decision has had a profound influence on courts in many jurisdictions that have considered the social host question since 1984 and has

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\textsuperscript{72} Id. at 1224.
\textsuperscript{73} Id. at 1221 (quoting Rappaport v. Nichols, 156 A.2d 1, 8 (N.J. 1959)).
\textsuperscript{74} Id. (quoting Rappaport v. Nichols, 156 A.2d 1, 11 (N.J. 1959)).
\textsuperscript{75} Kelly, 476 A.2d at 1222.
\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{79} See supra note 65 (text of statutory abrogation).
sparked a flurry of academic discussion on social host liability. Although all courts do not openly embrace the Kelly recognition of common law social host liability, the case is not without its followers.

C. Positions On Social Host Liability Adopted in Other Jurisdictions

The issue of social host liability has been addressed in almost every jurisdiction in recent years. Although the responses adopted have been varied, the courts in most states have adopted one of the following three positions or some variation of them.

1. Refusing to Impose Social Host Liability

Courts in several jurisdictions refuse to impose any liability on the social host. The reason most often cited for the refusal to


83. See DiPadova supra note 7, at 392-97.

84. See infra notes 86-110 and accompanying text.

85. See DiPadova supra note 7, at 396-97.

86. For a survey of jurisdictions refusing to extend liability to a social host,
impose social host liability is that "such a policy decision should be made by the legislature after full investigation, debate and examination of the relative merits of the conflicting positions." These courts add support to their decision by emphasizing the social host's lack of training and ability to recognize those who have consumed too much alcohol, the social host's limited ability to control intoxicated guests, and the social host's financial inability to protect himself adequately from the potential liability. Although the courts, rather than the legislatures, have been the traditional leaders in adapting and evolving the law to resolve new problems as they arise, jurisdictions in which courts defer to the legislatures on the social host liability issue must wait for the legislatures to act and deprive injured plaintiffs of a potential cause of action.

2. Imposing Liability Based on Statutes

Some jurisdictions have imposed liability on social hosts through the use of statutes. There are three ways in which liability can be imposed by statute: dram shop acts, liquor control statutes in conjunction with negligence per se theory, and by statutes directly imposing the liability.

The most difficult statute to use to impose social host liability is the Dram Shop Act. Dram shop acts are generally thought of as statutes which impose liability on the seller of alcoholic beverages when a third party is injured as a result of the intoxication of the buyer where the sell of the alcohol has contributed to the intoxica-

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see DiPadova, supra note 7, at 397 (listing Minnesota, Mississippi, Ohio, Pennsylvania, and Vermont).


90. See DiPadova, supra note 7, at 392-95.

Some creative courts have been able to construe broadly worded statutes, such as ones prohibiting any person from providing alcohol to certain classes of people, as applying to social hosts as well as commercial vendors. However, these efforts have been short-lived due to legislative action making the legislative intent not to impose social host liability crystal clear.

The second use of statutes to impose social host liability is the liquor control statute in conjunction with negligence per se theory. Similar to the dram shop act mechanism for imposing liability, the liquor control statute can be used to impose social host liability where the statute is broadly worded to prohibit any person from providing alcohol to a minor. Courts may adopt the duty imposed by statute as the standard of conduct to which all reasonable men must conform their acts for the protection of others against unreasonable risks. A violation of such a public safety statute constitutes negligence per se. The disadvantage of imposing social host liability on this mechanism is that most liquor control statutes only prohibit providing alcohol to minors. Therefore, the social host only has a duty to refrain from providing alcohol to minors, making the social host liable for the torts committed by only minor social guests and not those committed by adult social guests. As with the dram shop act mechanism, the liquor control mechanism runs the risk of being abolished through legislation.

Finally, statutes may be used to directly impose civil liability on the social host for the torts committed by their intoxicated guests if the torts were, in fact, proximately caused by the intoxication. No legislature has yet enacted such statutes, although at least two legislatures have allowed judicial construction of statutes

93. See, e.g., Williams v. Klemesrud, 197 N.W.2d 614 (Iowa 1972); Ross v. Ross, 200 N.W.2d 149 (Minn. 1972).
95. See Levin, supra note 91, at 482.
96. Id. at 481 (citing Restatement (Second) of Torts § 286 (1965)).
98. See Levin, supra note 91, at 482-84.
imposing social host liability to stand.\textsuperscript{100}

3. \textit{Imposing Liability Based on Common Law Negligence Principles}

In jurisdictions that lack any duty imposed by statute, the duty may nonetheless be imposed by courts through the use of common law negligence principles.\textsuperscript{101} The common law imposed a duty on each person to exercise that degree of care which a reasonable and prudent person would exercise under similar conditions.\textsuperscript{102} Any person failing to exercise reasonable care is liable for his negligence if the negligence is the proximate cause of injury to another.\textsuperscript{103}

In the social host context, any host who serves alcohol to a person that the host knew or should have known was under the influence of alcohol and would subsequently drive an automobile breaches his duty to exercise reasonable care because the host did something a reasonable person would not do.\textsuperscript{104} A reasonable and prudent person would have known that allowing the guest to drink and subsequently drive created an unreasonable degree of risk that the intoxicated guest who injure himself or others if permitted to drive.\textsuperscript{105} Therefore, the social host becomes liable for the injuries inflicted upon third parties by the intoxicated social guest that are proximately caused by the social host’s negligence.\textsuperscript{106}

Some courts have adopted this position to extend social host liability to the torts committed by the host’s adult guests.\textsuperscript{107} Other courts have limited the liability to the torts committed by the host’s minor guests only,\textsuperscript{108} believing that providing alcohol to the minor guest creates an unreasonable degree of risk that the minor guest would injure a third party because the minor, inexperienced

\textsuperscript{100} See DiPadova, \textit{supra} note 7, at 373 (listing Georgia, which is limited to minors, and Oregon).

\textsuperscript{101} See Levin, \textit{supra} note 91 at 488.

\textsuperscript{102} Id.


\textsuperscript{104} Id.

\textsuperscript{105} Id.

\textsuperscript{106} Id.

\textsuperscript{107} For a survey of jurisdictions adopting this position, see DiPadova, \textit{supra} note 7 at 396 (listing the jurisdictions adopting this position as California, Indiana, Iowa, Massachusetts, and New Jersey).

\textsuperscript{108} Id., (listing Georgia, Michigan, Oregon, and Wisconsin as states which have adopted this position).
in the effects of alcohol, lacks the necessary judgment to forego driving after drinking alcohol. These courts believe that adult guests, being held responsible for their own actions, are able to exercise the necessary judgment and decide for themselves not to drive after drinking alcohol.

**ANALYSIS**

Adhering to the national trend toward recognizing some form of social host liability, the North Carolina Supreme Court in *Hart v. Ivey* abandoned its prior policy of deference to the legislature and recognized social host liability based on common law negligence principles. The court articulated the new rule: a plaintiff states a cognizable claim under common law principles of negligence by alleging that the host-defendant served alcoholic beverages to a person when the host knew or should have known that the person was under the influence of alcohol and would drive an automobile on the streets or highway shortly after consuming the alcoholic beverage. Although the North Carolina Court of Appeals and the North Carolina Supreme Court expressed a willingness to recognize social host liability, the two courts disagreed on the means to be used in reaching the result. In recognizing social host liability based on common law negligence principles, the North Carolina Supreme Court adopted an expansive rule for recovery for plaintiffs injured by drunk drivers, setting the stage for further expansion.

**A. The Dispute Between the Courts on the Means to Be Employed**

The plaintiffs in *Hart v. Ivey* asked the North Carolina Court of Appeals to find social host liability based on common law negligence principles and on a negligence per se theory. The court

109. See Odier, supra note 8 at 100.
110. Id.
111. See DiPadova, supra note 7 at 352.
114. Id. at 305, 420 S.E.2d at 178.
115. Hart, 102 N.C. App. at 586, 403 S.E.2d at 916.
CAMPBELL LAW REVIEW summarily rejected the common law negligence rationale, stating that:

A review of the common law of this State reveals no precedent for the existence of such a cause of action. Our courts to date have not articulated any common law duty existing between a third-party furnishing alcohol to underage persons and the public at large. This Court is therefore not prepared to establish any such common law duty under the facts of this case.116

However, the North Carolina Court of Appeals expressed its willingness to impose a duty on the social host under the facts of the case under a negligence per se theory.117

The plaintiffs based their negligence per se theory on N.C. GEN. STAT. § 18B-302 (1983) which prohibits any person from aiding a person under the age of nineteen (19) to purchase, obtain, or possess alcoholic beverages. Characterizing the statute as a public safety statute, the North Carolina Court of Appeals found that the public policy and general purposes of the statute include: “(1) the protection of the customer from adverse consequences of intoxication and (2) the protection of the community at large from the injurious consequences of contact with an intoxicated person.”118 Since 1955 it has been settled in North Carolina case law that when a statute imposes a specific duty for the protection of others, a violation of such a statute constitutes negligence per se.119 Although the defendants argued that the statute only applies to commercial vendors and not to social hosts,120 the court was quick to point out that the statute makes it unlawful for any person to sell or give alcohol to a minor, making the statute applicable in the social host situation.121

In sharp contrast, the North Carolina Supreme Court dismissed the negligence per se theory and embraced the common law negligence principle theory.122 The court stated that the N.C. GEN. STAT. § 18B-302 is not a public safety statute because its purpose is to stop minors from drinking alcoholic beverages rather than to

116. Id. at 594, 403 S.E.2d at 921.
117. Id. at 593, 403 S.E.2d at 921.
118. Id. at 590, 403 S.E.2d at 919 (quoting Hutchens v. Hankins, 63 N.C. App. 1, 16, 303 S.E.2d 584, 593 (1983)).
120. Hart, 102 N.C. App. at 586, 403 S.E.2d at 917.
121. Id. at 589, 403 S.E.2d at 918.
122. Hart, 332 N.C. at 304, 420 S.E.2d at 177.
The court reasoned that if the statute were a public safety statute, it would apply to people over the legal drinking age as well. The court reversed the Court of Appeals, holding that a violation of N.C. GEN. STAT. § 18A-302 is not negligence per se.

The North Carolina Supreme Court did, however, express a willingness to impose liability on the social host under common law negligence principles. Tracing the reasoning found in *Kelly v. Gwinnell*, the court recited that “[a]ctionable negligence is the failure to exercise that degree of care which a reasonable and prudent person would exercise in similar circumstances.” In addition, the court acknowledged that “[t]he law imposes upon every person who enters upon an active course of conduct the positive duty to exercise ordinary care to protect others from harm and calls a violation of that duty negligence.” Further, the “defendant is liable for his negligence if the negligence is the proximate cause of the injury to a person to whom the defendant is under a duty to use reasonable care.” Applying these principles of negligence to the facts in *Hart*, the court concluded: that the defendants were under a duty to the public to act as a reasonable person would; that a reasonable person would not serve alcohol to a minor, knowing that the minor was intoxicated and would soon drive; and that the reasonable person would have foreseen the injurious results that did, in fact, occur.

B. Setting the Stage For Further Expansion

By finding social host liability under common law negligence principles, the North Carolina Supreme Court has set the stage for further expansion of the social host doctrine. The court is limited by the facts of the *Hart* case to impose liability on a social host for the torts of his minor guests, any suggestion of liability for the torts of adult guests being mere dicta. The negligence per se theory propounded by the North Carolina Court of Appeals was based

123. *Id.* at 303, 420 S.E.2d at 177.
124. *Id.* at 303-04, 420 S.E.2d at 177.
125. *Id.* at 304, 420 S.E.2d at 177.
127. *Hart*, 332 N.C. at 305, 420 S.E.2d at 177-78.
128. *Id.*, 420 S.E.2d at 178 (quoting *Council v. Dickerson’s Inc.*, 233 N.C. 472, 474, 64 S.E.2d 551, 553 (1951)).
129. *Id.*
130. *Id.*
on a statute that prohibited any person from selling or giving alcohol to minors. Such a holding could not easily be expanded to cover liability for the torts of adult guests because the social host would be under no statutory duty to withhold alcohol from such a guest. In contrast, the approach adopted by the North Carolina Supreme Court is capable of expansion under the appropriate facts to impose a duty on social hosts for the tort of their adult guests.

CONCLUSION

Following the national trend toward permitting recovery, the North Carolina Supreme Court in Hart v. Ivey recognized social host liability for the torts of one's intoxicated minor guest for the first time in the state. The approach which the court decided to adopt is the best choice available among the approaches adopted in other jurisdictions. The underpinnings of the approach are well established principles of tort law. The extension of the principles to reach the new holding are slight. As with any major change in the application of common law principles, uncertainty is sure to follow the decision for years. The possibility of legislative abrogation looms everpresent. Test cases are apt to be thrust upon the courts to determine whether the adopted approach is a hard and fast limit imposed by the court, or whether the approach is merely a step in the evolution toward even more expansive recovery for plaintiffs injured by drunk drivers.

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