

# On Social Host Liability

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## **Abstract**

This paper was originally written for Professor Camia Weaver, Criminology 135: *Introduction to Canadian Law and Legal Institutions: A Criminal Justice Perspective*. The assignment asked students to create a five-page legal analysis topic which discusses the circumstances around vicarious host liability. The paper uses APA citation style.

This paper delves into the complex nature around the circumstances of what makes a host vicariously liable for the actions of an inebriated guest. Drawing on information from previous court decisions and peer reviewed articles, this paper analyses social host liability in Canada. The structure of this paper consists of discussing what kind of tort is being discussed, what is required to prove this tort, the connection between liability and the host, and some defences available to said host. The importance of this paper is to describe the current normative around social host liability which is an underdeveloped area of the law.

## **On Social Host Liability**

The concept of "Vicarious Liability" within tort law refers to liability that extends to a third party responsible for the actions of the direct actor. Vicarious liability may extend to a social host who could be held liable for the actions caused by an intoxicated guest leaving a party. The purpose of this paper is to consider the main circumstances leading to a host being accountable under the notion of vicarious liability.

Prior to diving into the specific circumstances around social host liability, it is crucial to classify what kind of tort it would constitute. This type of liability would fall under negligence tort. In most cases, the host will not be trying to intentionally provide alcohol to cause harm to others; instead, if the host were to be liable it would be a matter of whether they took necessary precautions to prevent an accident. To prove that the host would be liable for the damages of either the guest or an affected third party, there must be proof that the host owed

a duty of care, the host's actions breached said duty of care, the plaintiff sustained damage, and said damage was caused by the host.

Another factor to consider prior to establishing what consists of duty of care, is to define the difference between a social and commercial host. Previous decisions on commercial host issues would not apply consistently in all commercial host situations. There is a significant contrast between both situations that lead to different precedent applying to each. The main difference that the courts have found between these is "The profit factor", which is when social hosts are usually not financially benefiting from guests drinking (Adjin-Tettey, 2002, p. 521). Although the court determined that the economic nature is not the main reason for the duty of care relationship, there exists a distinction between the extent of said duty of care for the commercial and social host (Adjin-Tettey, 2002, pp. 523-525).

The Supreme Court of Canada's findings regarding *Childs v. Desormeaux* are that on most occasions social hosts of parties that involve consumption of alcohol are not liable for damages caused by intoxicated guests driving (Côté-Finch & Tawdrous, 2019, p. 2). However, the first step in determining whether a host is liable for the actions of an inebriated guest leaving the party would be to establish if the host had a duty of care. To establish duty of care, the court must look at different factors such as foreseeability of the events that transpired, and the proximity of the relationship between individuals.

The first step in establishing a duty of care for the court is to look at the foreseeability of the events. In a negligence tort, liability is dependent on the defendant having been able to reasonably foresee an injury to the plaintiff (Adjin-Tettey, 2002, p. 523). To establish foreseeability "The Court of Appeal stated that foreseeability has revolved around whether the host had evidence that the guest was intoxicated, and therefore, whether it was reasonably foreseeable that the guest would be involved in an accident by their actions and behaviours" (Côté-Finch & Tawdrous, 2019, p. 6). Even though foreseeability has to be established on a case-by-case basis, there are some common situations that can lead to the host owing the plaintiff a duty of care. The circumstances include a combination of the following: providing alcohol to guests, having knowledge that a guest is heavily intoxicated, having knowledge of the guest's plan to drive or perform other reckless activity, and leaving room for reckless activities around the residence. Even though the courts have not specifically established those specific circumstances as a rule to follow, they are situations in which a reasonable person should be able to foresee accidents occurring.

The second concept involved in establishing a duty of care is proximity. Following the case of *Childs v. Desormeaux*, the court established the second determination in creating a duty of care which considers the relationship between the individuals, and whether this creates a duty of care (Côté-Finch & Tawdrous, 2019, p. 5). The court will perform a proximity analysis to determine if the relationship between host and guest affects the duty of care. The courts are “increasingly recognizing an affirmative duty of care in a number of nonfeasance-like situations, based on a “special relationship” between the parties” (Adjin-Tettey, 2002, p. 516). Therefore, the relationship around the host and guests is relevant to determine if they would be found liable. The Supreme Court of Canada found that there are three situations that would establish a proximity relationship, the first is the host intentionally invites guests into a party in which there is a risk that they create or control, there is a paternalistic relationship between host and guest of supervision and control, and lastly the host has a role that includes responsibilities to the guests of the party (Côté-Finch & Tawdrous, 2019, pp. 2-3). These considerations by The Supreme Court of Canada lead to different conditions that would aid in establishing a duty of care. Conditions could include parties in which the host will do things such as: invite guests to his home and provide alcohol, be responsible for underage drinkers, and host in an environment in which he adopts a responsibility of taking care of the guests.

Proximity also establishes a duty to act. “Similarly, reasonable foreseeability of injury can arise where guests, to the host's knowledge, consume large amounts of alcohol, regardless of the source. This should suffice for the relationship of proximity anticipated by Lord Atkin's dictum in *Donoghue v. Stevenson*” (Adjin-Tettey, 2002, p. 521). When establishing a strong relationship between host and guest, the host can have a duty to stop the guest from consuming more alcohol. This issue also ties back to foreseeability as a host with a link to the guest, and future knowledge about his plans to drive home inebriated can cause the host to be liable of negligence and vicarious liability.

Moreover, when looking at negligence liability it is important to consider causation. When courts examine causation, they take a look at the chain of events that unfolded the accident that caused damage and determine if the actions of the defendant caused said accident and the damages done to the plaintiff. In a Vicarious Liability case, the courts would look at the events that transpired and determine if the host's negligence allowed the damage done by the guests to occur. Some examples of a break in causation might be the guests of the party getting into an accident that was completely unforeseeable, or the guests leaving

the party and getting into an accident after being looked after by a trusted individual who is not the host. In the social host liability case, *Baumeister v. Drake*, The British Columbia Supreme Court dismissed the case against the host because they did not permit, induce, or encourage intoxicated guests to consume alcohol (Adjin-Tettey, 2002, p. 520). In this case, there was a break of causation because the host's actions did not cause or encourage the accident to happen.

The last thing to consider when establishing vicarious liability action against the host are the possible defenses available to them. The host can argue that there was an assumption of risk by assisting the party and drinking and depending on the circumstances the host may claim that the guests participated willingly in criminal behaviour.

The host can claim that the affected guest assumed a certain amount of risk by assisting the party and putting themselves in a dangerous position which led to the accident. There would be two considerations for the court in this situation. The first would be to look at whether the guest took into consideration their own interests; secondly did failing to consider their interest lead to the damage. However, in *Childs* the court found that simply holding a house party where alcohol is served is not an invitation to participate in highly risky activity. More is required to establish a risk that requires positive action" (Côté-Finch & Tawdrous, 2019, p. 4). The court has already established that the guests merely attending a party where alcohol is served is not an assumption of risk. The host would need more than that to establish that the guests willingly put themselves at risk.

The second defence that the host could use is claiming that the guests willingly participated in antisocial or criminal behavior. This defense would be very circumstance dependent, and it is very tricky. This is due to the fact that it is difficult to prove that a host's negligence in providing alcohol will lead to the aforementioned illegal activity. One situation where this defence would most likely work is in a party hosted for adults in which minors illegally choose to drink without the hosts' knowledge and get into an accident due to that.

To summarize, there are potentially cases in which a host would be vicariously liable for intoxicated guests of a party getting into an accident. The action against the host would most likely classify as a negligence case. For the host to be liable there would need to be an established duty of care which constitutes the foreseeability of the accidents, and the proximity relationship between the individuals. There would also be a consideration of the chain of causation, and a revision of whether the negligence of the host truly led to the accident. Lastly,

there are two defences that the host could claim; the first being the guests willingly assumed risk, and the second that they guests participated in an illegal activity.

## References

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