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Tort Law - Social Host Liability - Non-Liability of Minors

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TORT LAW—SOCIAL HOST LIABILITY—NON-LIABILITY OF MINORS—The Supreme Court of Pennsylvania held that there is no liability when a minor furnishes alcohol to another minor who is subsequently injured due to intoxication.

Kapres v. Heller, 640 A.2d 888 (Pa. 1994).

Richard N. Kapres (the “Appellant”), a minor, was a student at Clarion University, in Clarion, Pennsylvania.¹ On March 21, 1986, the Appellant attended three parties hosted by other minor students (the “Appellees”).² After consuming alcohol at each party, the Appellant walked home and was struck by an automobile.³ At the time of the accident, the Appellant’s blood alcohol level was 0.196%.⁴

The Appellant filed suit in the Court of Common Pleas in Allegheny County against several minors alleging that he was negligently served alcohol.⁵ He asserted that his intoxication

1. *Kapres v. Heller*, 640 A.2d 888, 889 (Pa. 1994). The Appellant was nineteen years of age. *Kapres*, 640 A.2d at 890.

2. *Kapres*, 640 A.2d at 889. The Appellees were all under the age of twenty-one. *Id.*

3. *Id.* at 889. The Appellant was returning to his dormitory at approximately 2:00 A.M. when he was struck. Brief for Appellant at 6, *Kapres v. Heller*, 640 A.2d 888 (Pa. 1994) (No. 0014). The Appellant suffered severe injuries and was sent by a Life Flight helicopter to Allegheny General Hospital in Pittsburgh, Pennsylvania. Brief for Appellant, at 6. He was hospitalized for seventeen days and then confined to a wheelchair for approximately three months. *Id.*

4. *Kapres*, 640 A.2d at 890. The Pennsylvania Motor Vehicle Code provides a standard to determine whether individuals are intoxicated. See 75 PA. CONS. STAT. § 1547 (1982). The Pennsylvania Motor Vehicle Code provides that if “the amount of alcohol by weight in the blood of the person tested is 0.10% or more,” it shall be presumed that the defendant was under the influence of alcohol. 75 PA. CONS. STAT. § 1547(d)(3).

Blood alcohol testing is conducted by measuring the alcohol level in the bloodstream. Charles L. Winek & Francis M. Esposito, *Antemortem and Postmortem Alcohol Determinations* 20 (1984). The results of the tests vary according to the weight of the individual and the rate of absorption into the bloodstream. *Id.* For example, if a 150-pound person consumes four drinks (a “drink” equals one 12 ounce can of beer or an ounce of liquor) in one hour his or her blood alcohol level will be 0.10%. *Id.* at 20, 24. If that same person extended his or her consumption over a three hour period, the blood alcohol level would be 0.046% (less than the legal level of intoxication). *Id.* at 20, 23.

5. *Kapres*, 640 A.2d at 890. The Supreme Court of Pennsylvania has defined negligence as “the want of due care which a reasonable man would exercise under

was the proximate cause of his injuries.⁶ The Appellees subsequently filed motions for summary judgment.⁷ The motions were granted by the court of common pleas.⁸

The Appellant appealed the trial court's decision to the Superior Court of Pennsylvania.⁹ The superior court affirmed the common pleas court's ruling.¹⁰ The court asserted that there was no basis for imposing social host liability on individuals under twenty-one years of age.¹¹ The superior court determined that individuals under the age of twenty-one were incompetent to handle the effects of alcohol.¹² Therefore, the court concluded that minors did not owe a duty to other minors when furnishing alcohol.¹³

The Appellant argued that the minor defendants should be

the circumstances." *Gift v. Palmer*, 141 A.2d 408, 409 (Pa. 1958) (citing *Finnin v. Neubert*, 105 A.2d 77, 78 (Pa. 1954)).

The minor Appellant initiated suit against multiple parties, of which only the Appellees, who sponsored the parties, and were alleged to have actually furnished the alcohol to the Appellant, were involved in this appeal. *Kapres*, 640 A.2d at 890 n.3. The other original parties included the owners of the buildings that housed the parties and an adult tenant of one of the apartments where a party was held. *Id.*

6. *Id.* Proximate cause is an element of negligence and is defined as a primary cause, uninterrupted by any intervening cause, which produces the injury and without which the accident could not happen. BLACK'S LAW DICTIONARY 1225 (6th ed. 1990).

Proximate cause has been defined by the Superior Court of Pennsylvania as a limitation of damages resulting from a breach of duty. See *Alumni Association, Delta Zeta Zeta v. Sullivan*, 535 A.2d 1095, 1098 (Pa. Super. Ct. 1987). The superior court in *Sullivan* stated that "because of convenience, public policy, or a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point, as no longer a 'proximate' or 'legal' consequence naturally flowing from the wrongdoer's misconduct." *Sullivan*, 535 A.2d at 1098. At some point along the causal chain, the law makes a determination that liability will be limited. *Id.*

7. *Kapres*, 640 A.2d at 890. Summary judgment is defined as a procedural device used for dissolution of a controversy before reaching the trial level when there is no dispute as to the material facts or where there is only a question of law involved. BLACK'S LAW DICTIONARY 1435 (6th ed. 1990).

8. *Kapres*, 640 A.2d at 890.

9. *Kapres v. Heller*, 612 A.2d 987 (Pa. Super. Ct.), *aff'd*, 640 A.2d 888 (Pa. 1994). The appeals from the several motions were consolidated by the superior court. *Kapres*, 612 A.2d at 988.

10. *Kapres*, 612 A.2d at 992.

11. *Id.* at 991.

12. *Id.* The superior court adopted the rationale of the Pennsylvania Supreme Court in *Congini*. *Kapres*, 612 A.2d at 989 (citing *Congini v. Portersville Valve Co.*, 470 A.2d 515, 517 (Pa. 1983)). *Congini* addressed the issue of whether an adult, who served alcohol to a minor, to the point of intoxication, who was then subsequently injured, could be held liable for such action. *Congini*, 470 A.2d at 517. The court in *Congini* held that liability would exist on the part of the adult for serving alcohol to one not capable of handling the effects of alcohol. *Id.* at 518. See notes 53-62 and accompanying text for a further discussion of *Congini*.

13. *Kapres*, 612 A.2d at 991.

treated as adults.¹⁴ The Appellant noted that because the minor defendants were over the age of eighteen, they were considered adults under the Pennsylvania Rules of Civil Procedure¹⁵ and also were subject to criminal prosecution for furnishing alcohol under the Pennsylvania Crimes Code (the "Crimes Code").¹⁶ The superior court rejected this argument and concluded that minors were deemed incompetent to judge the effects of alcohol on others.¹⁷ Therefore, the court determined that minors could not be held liable for supplying alcohol to others.¹⁸

The Appellant appealed the superior court's decision to the Supreme Court of Pennsylvania.¹⁹ The supreme court addressed the issue of whether a minor host could be liable under the social host doctrine for injuries resulting from another minor's intoxication.²⁰ The Supreme Court of Pennsylvania²¹ held that the social host doctrine was inapplicable when both the plaintiff and the defendant were minors, and affirmed the lower courts' decisions.²²

The court began its analysis by noting that social host liability did not exist where an adult served or furnished alcohol to another adult.²³ The court, however, indicated that liability could exist in cases where an adult furnished alcohol to a minor.²⁴

14. *Id.* at 989.

15. See PA. R. CIV. P. 76. The Pennsylvania Rules of Civil Procedure defines a minor as "an individual under the age of eighteen years." *Id.*

16. *Kapres*, 612 A.2d at 989 (citing *Congini*, 470 A.2d at 517). The Pennsylvania Crimes Code provides that "a person commits a summary offense if he, being less than 21 years of age, attempts to purchase, purchases, consumes, possesses or knowingly and intentionally transports any liquor or malt beverages." 18 PA. CONS. STAT. § 6308(a) (1988 & Supp. 1994).

17. *Kapres*, 612 A.2d at 991.

18. *Id.*

19. *Kapres*, 640 A.2d at 890.

20. *Id.* at 889. The court indicated that the social host doctrine is used to designate a claim in negligence against a host who furnishes alcohol to a guest, without requiring compensation. *Id.* at 889 n.1. Liability is imposed where because of such intoxication, the guest is either injured or causes injury to another. *Id.*

The doctrine of social host liability was adopted in the case of *Klein v. Raysinger*. See *Klein v. Raysinger*, 470 A.2d 507, 510 (Pa. 1983).

21. The majority opinion was written by Justice Cappy joined by Chief Justice Nix, and Justices Zappala, Flaherty and Castille. *Kapres*, 612 A.2d at 891. Justices Papadakos and Montemuro dissented and Justice Larson did not participate in this decision. *Id.*

22. *Id.* at 889.

23. *Id.* at 890 (quoting *Klein*, 470 A.2d at 510-11). The supreme court in *Klein* determined that adults who served or furnished alcohol to other adults were not liable as social hosts. See *Klein*, 470 A.2d at 508. See notes 45-52 and accompanying text for a discussion of *Klein*.

24. *Kapres*, 640 A.2d at 890. The Supreme Court of Pennsylvania formulated this rule in *Congini*. See *Congini*, 470 A.2d at 518. The court in *Congini* relied on the Pennsylvania General Assembly's determination that persons under the age of

The court reasoned that the exception to the social host doctrine was based on the presumption that minors were incompetent to handle alcohol.²⁵ As a result, the court concluded that Appellant's attempt to recover damages for his injuries was unfounded.²⁶

The Appellant argued that the court should hold Appellees to the standard required of adults and treat the Appellant as a minor.²⁷ The supreme court rejected the Appellant's contentions.²⁸ The court asserted that because both the Appellant and the Appellees were minors, both were incompetent to handle alcohol.²⁹ Therefore, the court observed that it could not hold Appellees liable without holding the Appellant responsible for his actions as well.³⁰ The court concluded that a minor did not owe a duty of care to another minor after furnishing alcohol.³¹

In dissent, Justice Papadakos addressed the apparent inconsistency that would result if minors were not civilly liable for furnishing alcohol to other minors.³² The dissent asserted that because persons under the age of twenty-one were criminally liable as accomplices for serving alcohol to other minors, liability should also exist in civil litigation.³³ The dissent suggested that public policy required the imposition of liability in order to prop-

twenty-one years of age are incompetent to handle alcohol. *Id.*

The court reviewed whether the Appellees' motions for summary judgment were properly granted. *Kapres*, 640 A.2d at 891. The court indicated that the proper standard of review for a summary judgment was whether "the pleadings, depositions, answers to interrogatories . . . show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." *Kapres*, 640 A.2d at 890 (quoting *Marks v. Tasman*, 589 A.2d 205, 206 (Pa. 1991)). The court reasoned that a thorough review of the social host doctrine was necessary in order to determine if a genuine issue of material fact existed. *Kapres*, 640 A.2d at 890.

25. *Kapres*, 640 A.2d at 891. The concept that minors were incompetent to handle alcohol was first expressed by the legislature in section 6308(a) of the Crimes Code and addressed by the supreme court in *Congini*. *Id.* (citing *Congini*, 470 A.2d at 517).

26. *Kapres*, 640 A.2d at 891.

27. *Id.* The traditional standard held adults negligent *per se* in furnishing alcohol to minors. See *Congini*, 470 A.2d at 518.

28. *Kapres*, 640 A.2d at 891.

29. *Id.*

30. *Id.*

31. *Id.* at 891. The court noted that a number of sister-state jurisdictions were virtually unanimous in refusing to extend social host liability to persons who owed no duty of care in furnishing others alcohol at social gatherings. See *Congini*, 470 A.2d at 517. The supreme court reaffirmed the holding of *Congini* for cases involving the furnishing of alcoholic beverages from adults to minors. *Kapres*, 640 A.2d at 891.

32. *Kapres*, 640 A.2d at 892 (Papadakos, J., dissenting).

33. *Id.*

erly regulate the pervasive danger of alcohol abuse.³⁴

The concept of holding social hosts liable for furnishing alcoholic beverages did not exist at common law.³⁵ Liability for injuries caused by intoxication was first introduced in Pennsylvania with the enactment of the Dram Shop Act (the "Act").³⁶ The Dram Shop Act imposed civil liability on liquor licensees.³⁷ The Act created a statutory cause of action enforceable by anyone injured as a result of another's intoxicated conduct.³⁸ The Act applied only in circumstances where the actor was visibly intoxicated and was served additional alcoholic beverages by the licensee, prior to his injurious conduct.³⁹ The Dram Shop Act of 1854 was ultimately superseded by the Pennsylvania Liquor Code (the "Liquor Code").⁴⁰

The genesis of the social host liability doctrine in Pennsylvania arrived with the supreme court's decision in *Manning v. Andy*.⁴¹ In *Manning*, the court addressed the issue of whether non-licensed individuals, who furnished alcohol to others free of charge, could be held liable for any resulting injuries.⁴² The *Manning* decision stemmed from injuries caused by intoxication of a guest at a party, hosted by the guest's employer.⁴³ The court held that only licensees, who were engaged in the sale of alcoholic beverages, could be held civilly liable to injured parties.⁴⁴

34. *Id.*

35. See *Cruse v. Aden*, 20 N.E. 73 (Ill. 1889). The court in *Cruse* held that "[i]t was not a tort at common law to either sell or give intoxicating liquors to a strong and able-bodied man." *Cruse*, 20 N.E. at 74.

In *Cruse*, an intoxicated adult, while riding horseback, was thrown from his horse, receiving injuries which ultimately resulted in death. *Id.* at 73. The decedent, prior to the accident, was served two alcoholic beverages by the defendant, out of "an act of mere courtesy and politeness." *Id.* at 74. The court held that because the alcohol was given free of charge to an adult by another adult, the Dram Shop Act did not apply. *Id.* at 76. Thus, the court resorted to the common law which had determined that no liability existed for the act of furnishing alcoholic beverages. *Id.*

36. See 1854 Pa. Laws 663, Act No. 648, § 3 (codified as amended at PA. STAT. ANN. tit. 47, § 4-493 (1969 & Supp. 1994)).

37. See 1854 Pa. Laws 663, Act No. 648, § 3. The name "dram shop" came from the title used to address establishments that sold alcohol. BLACK'S LAW DICTIONARY 494 (6th ed. 1990). A dram shop is a "drinking establishment where liquors are sold to be drunk on the premises." *Id.*

38. 1854 Pa. Laws 663, Act No. 648, § 3.

39. *Id.* §§ 1, 3.

40. See PA. STAT. ANN. tit. 47, § 4-493 (1969 & Supp. 1994).

41. 310 A.2d 75 (Pa. 1973).

42. *Manning*, 310 A.2d at 76.

43. *Id.* at 75.

44. *Id.* at 76. The court determined that to hold otherwise would create difficulties better left for the legislature to deliberate. *Id.*

The concurrence asserted that the Liquor Code was primarily concerned with regulating licensees, thus providing remedies to those injured solely by such licens-

The issue of social host liability was addressed by the Supreme Court of Pennsylvania in *Klein v. Raysinger*⁴⁵ and *Congini v. Portersville Valve Company*.⁴⁶ In *Klein*, the issue was whether liability should extend to a social host who served drinks to a guest who intended to drive a motor vehicle and was visibly intoxicated.⁴⁷ Upon leaving the host's residence, the plaintiff's car was struck from behind by another vehicle.⁴⁸ The court noted that some jurisdictions imposed liability upon social hosts, but only in situations where a minor was served alcoholic beverages from an adult host.⁴⁹ These cases however were distinguishable because in *Klein*, both the host and the guest were adults.⁵⁰ The *Klein* court, therefore, applied the common law rule that consumption of alcohol, rather than the act of furnishing it, was the proximate cause of the resulting injuries, provided both parties in the action were adults.⁵¹ The court held that an adult host who furnished alcohol to another adult was not liable for the resulting injuries.⁵²

On the same day that the decision in *Klein* was rendered, the Supreme Court of Pennsylvania imposed social host liability in *Congini v. Portersville Valve Co.*⁵³ In *Congini*, the issue was whether an adult, who served alcohol to a minor in a social setting, could be held liable for injuries to that minor or to third parties.⁵⁴ The plaintiff was given alcoholic beverages by an adult social host at an employee Christmas party.⁵⁵ The plain-

ees. *Id.* at 77 (Pomeroy, J., concurring). Justice Pomeroy added, however, that liability would exist where an individual served alcohol to an intoxicated guest and knew that the guest would drive home afterwards. *Id.* The concurrence further noted that social hosts should not be strictly liable under the Liquor Code because social hosts were not members of the liquor industry and thus not within the classification of a licensee. *Id.* The concurrence also indicated that no other court in applying the Liquor Code had imposed civil liability upon social hosts. *Id.*

45. 470 A.2d 507 (Pa. 1983).

46. 470 A.2d 515 (Pa. 1983).

47. *Klein*, 470 A.2d at 508.

48. *Id.* Prior to this accident, the defendant had been served alcoholic beverages at a residence and then was served alcohol at an inn. *Id.*

49. *Id.* The states of California, Illinois and Michigan all imposed liability where a minor guest was served alcoholic beverages from an adult host. *Id.* (citing *Burke v. Superior Court*, 181 Cal. Rptr. 149 (Cal. 1980); *Brattain v. Herron*, 309 N.E.2d 150 (Ill. App. Ct. 1974) and *Thaut v. Finley*, 213 N.W.2d 820 (Mich. 1973)).

50. *Klein*, 470 A.2d at 508.

51. *Id.*

52. *Id.* at 510.

53. 470 A.2d 515 (Pa. 1983).

54. *Congini*, 470 A.2d at 516.

55. *Id.* The plaintiff in *Congini* was 18 years of age. *Id.* The plaintiff's car keys were in the custody of the host. *Id.* When the plaintiff requested his keys at the end of the party, the host, aware of the plaintiff's intoxication, handed over the keys. *Id.*

tiff later left the party and while driving home struck another vehicle.⁵⁶ The plaintiff brought an action against the social host, contending that the host was negligent both in providing the plaintiff with alcohol to the point of intoxication and also in surrendering the plaintiff's car keys.⁵⁷

In determining whether liability existed in situations involving minors, the court noted that the legislature had made it a summary offense for minors to purchase alcohol.⁵⁸ The court asserted that this legislation indicated that the general assembly had determined that persons under the age of twenty-one were unable to handle alcohol.⁵⁹ The court also noted that any adult who furnished liquor to a minor would be held liable as an accomplice.⁶⁰

56. *Id.* at 516. The plaintiff suffered multiple fractures and brain damage resulting in permanent disability. *Id.*

57. *Id.* at 516-17.

58. *Id.* at 516.

59. *Congini*, 470 A.2d at 517. The court asserted that the passage of Section 6308 of the Code in 1972 conclusively established that persons under the age of 21 were unable and incompetent to handle alcohol. *Id.* See note 16 for the text of Section 6308(a).

Under the Crimes Code any person under the age of twenty-one who attempts to purchase, purchases, consumes or transports alcoholic beverages is culpable. 18 PA. CONS. STAT. § 6308(a). The court in *Congini* noted that the legislature's motive in enacting Section 6308 of the Code was to protect minors, along with the public at large, from the harmful results caused by furnishing alcohol to minors from adults. *Congini*, 470 A.2d at 517.

The court noted that Pennsylvania courts had previously held that if a class of persons was protected by a statute, any harm that befell the class, from any breach of duty owed to them by others, who were not in that class, was negligence *per se*. *Id.* (citing *Majors v. Brodhead Hotel*, 205 A.2d 875 (Pa. 1965)). The courts of Pennsylvania have adopted Black's Law Dictionary's definition of negligence *per se*. See *White v. Southeastern Pennsylvania Trans. Authority*, 518 A.2d 810, 815 (Pa. Super. Ct. 1987). Accordingly, negligence *per se* is:

Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances either because it is in violation of a statute . . . or because it is so . . . opposed to the dictates of common prudence . . . that no careful person would be guilty of it.

White, 518 A.2d at 815. (citing BLACK'S LAW DICTIONARY, 933 (5th ed. 1979)).

The Restatement (Second) of Torts has established a standard for courts to employ in determining negligence *per se*. Section 286 provides:

The court may adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively or in part (a) to protect a class of persons which includes the one whose interest is invaded, and (b) to protect the particular interest against the kind of harm which resulted, and (c) to protect that interest against the kind of harm which has resulted, and (d) to protect that interest against the particular hazard from which the harm results.

RESTATEMENT (SECOND) OF TORTS § 286 (1965).

60. *Congini*, 470 A.2d at 517. The court based this conclusion on Section 306 of the Crimes Code which provides that:

The court in *Congini* reasoned that if an adult violated the Crimes Code by furnishing alcohol to a minor who was subsequently injured by such intoxication, it would be considered negligence *per se*.⁶¹ The court therefore held that an adult, who served alcohol to a minor guest, would be liable for any injuries proximately caused by the minor's intoxication.⁶²

Several years after its rulings in *Klein* and *Congini*, the Supreme Court of Pennsylvania expanded the doctrine of social host liability in *Orner v. Mallick*.⁶³ In *Orner*, adult social hosts furnished alcohol to a minor who was subsequently injured.⁶⁴ The issue was whether a social host would be liable for furnishing any amount of alcohol to a minor.⁶⁵ Relying on *Congini*'s holding that adults owed a duty of care to minor guests, the court in *Orner* found that a breach of that duty occurred with

A person is an accomplice of another person in the commission of an offense if . . . with the intent of promoting or facilitating the commission of the offense, he: (i) solicits such other person to commit it; or (ii) aids or agrees or attempts to aid such other person in planning or committing it

18 PA. CONS. STAT. § 306(c)(1)(i)(ii) (1973).

61. *Congini*, 470 A.2d at 516.

62. *Id.* at 517. Additionally, the *Congini* court held that a minor, 18 years of age or older, could be contributorily negligent. *Id.* (citing *Kuhns v. Brugger*, 135 A.2d 396, 401 (Pa. 1957)). The *Kuhns* court established three categories of negligence for minors based on their respective age ranges. *Kuhns*, 135 A.2d at 401. The court stated that:

Minors under the age of seven are conclusively presumed incapable of negligence; minors over fourteen are presumptively capable of negligence, the burden placed on minors to prove their incapacity; minors between the ages of seven and fourteen are presumed to be incapable . . . (of negligence) . . . but such presumption is rebuttable and grows weaker with each year until the fourteenth year is reached.

Id.; see also *Commonwealth v. Zietz*, 72 A.2d 282 (Pa. 1950); *Quattrachi v. Pittsburgh Rys. Co.*, 164 A.2d 59 (Pa. 1932); *Kehler v. Schwenk*, 22 A. 910 (Pa. 1891); *Rasmus v. Pennsylvania R. Co.*, 67 A.2d 660 (Pa. Super. Ct. 1949).

Thus, because Pennsylvania has enacted a comparative negligence recovery act, the degree of the minor's negligence will determine whether and by what amount an adult defendant host may be liable based on the amount of damages. See *Congini*, 470 A.2d at 519; see also 42 PA. CONS. STAT. § 7102 (1982). In the course of one day, the Supreme Court of Pennsylvania established that no liability would result when adult hosts furnish alcohol to adult guests who later are injured as a result of their injuries. *Klein*, 470 A.2d at 507. The supreme court contemporaneously established social host liability for adult hosts who furnished alcohol to minor guests who subsequently injured a third party or who were themselves injured. *Congini*, 470 A.2d at 515.

63. 527 A.2d 521 (Pa. 1987).

64. *Orner*, 527 A.2d at 522. The plaintiff was a minor and attended three parties where he was served alcohol. *Id.* at 521. The plaintiff was 19 years of age. *Id.* Two of these parties were held at private residences and the third at a hotel. *Id.* At the third party, the plaintiff was severely injured as a result of his intoxication. *Id.* The plaintiff fell over a second floor railing and sustained multiple injuries to his head. *Id.*

65. *Id.* at 521.

the service of any amount of alcohol.⁶⁶ The court, however, remanded the case to the trial court for a determination of causation.⁶⁷

The supreme court thus enlarged the doctrine of social host liability by concluding that a social host would be liable for providing alcohol in any amount to a minor guest.⁶⁸ Therefore, rather than imposing liability only in cases where the minor guest was intoxicated, liability was imposed regardless of the quantity of consumption or the blood alcohol level of the minor guest.⁶⁹

In 1988, the Superior Court of Pennsylvania, in *Jefferis v. Commonwealth*,⁷⁰ developed a test to determine the extent of social host liability when adults furnished alcohol to minors.⁷¹ In *Jefferis*, the issue was whether to impose social host liability when a minor, upon being furnished alcohol at a fraternity party, was injured as a result of intoxication.⁷² The court determined that social host liability only applied if the adult intended to furnish alcohol to a minor, in fact furnished that alcohol and that the minor obtained the alcohol because of the adult's act.⁷³ The court established this test on the basis of accomplice liability for furnishing alcohol to minors.⁷⁴ Thus, the superior court restricted the holding in *Congini* by imposing the requirement of proving specific intent on the part of the adult host.⁷⁵ As a result, the supreme court remanded the case to the trial court to determine whether the adult intentionally rendered substantial assistance to the minor guest.⁷⁶

The social host liability doctrine in Pennsylvania was further limited by the supreme court in *Alumni Association v.*

66. *Id.* at 523. The court established that the duty was breached even if alcohol was served to guests but not to the point of intoxication. *Id.*

67. *Id.* at 524.

68. *Id.*

69. *Orner*, 527 A.2d at 524.

70. 537 A.2d 355 (Pa. Super. Ct. 1988).

71. *Jefferis*, 537 A.2d at 358.

72. *Id.* at 356.

73. *Id.* at 358. The court developed this test by synthesizing Section 306 of the Crimes Code and the Restatement (Second) of Torts. *Id.*

In a subsequent decision, the superior court added that in order for liability to attach to an adult who furnished alcohol to a minor, the adult must have intentionally rendered substantial assistance to the minor in providing for that minor's consumption. See *Goldberg v. Delta Tau Delta*, 613 A.2d 1250, 1254 (Pa. Super. Ct.), *allocatur denied*, 626 A.2d 1158 (Pa. 1992).

74. *Jefferis*, 537 A.2d at 358.

75. *Id.*

76. *Id.* at 358-59.

Sullivan.⁷⁷ In *Sullivan*, a landowner, brought suit against a fraternity for serving alcohol to a minor, who, while intoxicated, started a fire that caused substantial damage to the landowner's property.⁷⁸ The issue was whether social host liability would exist in situations where the defendant neither served nor furnished alcohol to a minor.⁷⁹

The supreme court held that the host had to have actual notice that the guest was consuming alcohol furnished by the host.⁸⁰ The court asserted that imputed knowledge was insufficient to establish social host liability.⁸¹ Based on this determination, the supreme court concluded that because the defendant did not have actual knowledge of the minor guest's consumption of alcohol, social host liability could not be imposed.⁸²

Approximately one year prior to the supreme court's ruling in *Kapres v. Heller*, two decisions rendered in the commonwealth court held that social host liability applied to minors who served alcohol to other minors.⁸³ In *Muntz v. Pennsylvania Department of Transportation*,⁸⁴ the issue was whether social host liability should be applied to persons under the age of twenty-one who served alcohol to other minors.⁸⁵ The minor plaintiff in *Muntz*

77. 572 A.2d 1209 (Pa. 1990).

78. *Sullivan*, 572 A.2d at 1210. The minor was an 18 year-old freshman at Bucknell University. *Id.* at 1209. The minor consumed alcohol at two parties. *Id.* One of the parties was in the minor's dormitory and the other was hosted by the fraternity. *Id.* The fire was allegedly started by the minor and another guest at the fraternity party. *Id.* at 1210.

79. *Id.* at 1209.

80. *Id.* The court mentioned that implementation of the substantial assistance method would incorporate an imputed knowledge standard on the part of the defendant social host. *Id.* Accordingly under that method, liability would be expanded. *Id.* Therefore, the substantial assistance method was rejected. *Id.*

81. *Id.* at 1212. The court noted that the phrase "knowingly furnished," used in *Congini*, had been interpreted in more than one way. *Id.* at 1212. The first test was originated by the third circuit court in *Fassett v. Delta Kappa Epsilon*. See *Fassett v. Delta Kappa Epsilon*, 807 F.2d 1150, 1163 (3d Cir. 1986). The test would render liability where the host substantially assisted in the minor's consumption of alcohol. *Fassett*, 807 F.2d at 1163. The court suggested six factors for determining whether the host rendered substantial assistance. *Id.* at 1164. The *Sullivan* court devised a more narrow test for determining social host liability. The court held that liability would only be imposed in situations where the host actually knows the minor was consuming alcohol. *Sullivan*, 572 A.2d at 1212. However, the court remarked that it would not restrict the application of social host liability solely to situations where the host physically handed an alcoholic beverage to the guest. *Id.* at 1212-13.

82. *Sullivan*, 572 A.2d at 1213.

83. See *Muntz v. Commonwealth of Pa.*, Dep't of Transp., 630 A.2d 524 (Pa. Commw. Ct. 1993); *Sperando v. Commonwealth of Pa.*, Dep't of Transp., 630 A.2d 532 (Pa. Commw. Ct. 1993).

84. 630 A.2d 524 (Pa. Commw. Ct. 1993).

85. *Muntz*, 630 A.2d at 525.

consumed alcohol furnished by two minor defendants.⁸⁶ The plaintiff subsequently injured a third person.⁸⁷ The court ruled that holding a minor negligent *per se* for consuming alcohol but not for furnishing alcohol to another minor was wholly inconsistent with the current law.⁸⁸

The commonwealth court distinguished this case factually from *Congini*.⁸⁹ The court noted that in *Congini*, the parties involved were an adult host and a minor guest, and that *Muntz* involved a minor serving another minor.⁹⁰ However, the *Muntz* court did rely on the argument suggested in *Congini* that minors could be held liable under a comparative negligence theory.⁹¹ Thus, the *Muntz* court concluded that the apparent inconsistency could only be remedied by finding minors liable as social hosts.⁹²

In *Sperando v. Commonwealth of Pennsylvania, Department of Transportation*,⁹³ the issue was also whether social host liability should be applied to a minor who served alcohol to other minors.⁹⁴ The plaintiffs were injured when they were struck by an automobile driven by an intoxicated minor.⁹⁵ The minor plaintiff had previously been furnished alcohol by another minor.⁹⁶ The commonwealth court asserted that social host liability existed when one minor served alcohol to another minor.⁹⁷ Thus, the plaintiffs' claim was remanded for trial to consider the extent of the defendant's liability.⁹⁸

Despite the inconsistency prior to the *Kapres* decision, the court in *Kapres* has set forth a consistent standard for Pennsylvania courts to apply in the future. The decision in *Kapres* follows the rationale in *Klein* and *Congini*. The court in *Klein* determined that adults were physically able to handle the effects

86. *Id.*

87. *Id.* The minor plaintiff injured a third person while driving under the influence of alcohol. *Id.*

88. *Id.*

89. *Id.*

90. *Muntz*, 630 A.2d at 525.

91. *Id.* at 526.

92. *Id.* In so holding, the *Muntz* court declined to follow the Superior Court of Pennsylvania's decision in *Kapres*, which prohibited the imposition of social host liability between minors. *Id.*

93. 630 A.2d 532 (Pa. Commw. Ct. 1993).

94. *Sperando*, 630 A.2d at 533.

95. *Id.*

96. *Id.*

97. *Id.* The court's decision was controlled by its previous decision in *Muntz*. *Id.*

98. *Id.* The Supreme Court of Pennsylvania did not address the decisions of the commonwealth court in *Muntz* and *Sperando* when deciding *Kapres*.

of alcohol.⁹⁹ Following this, the court in *Congini* concluded that minors were both physically incapable and mentally incompetent to handle the effects of alcohol.¹⁰⁰

The decision in *Kapres* followed this rationale in its development of a third application of the social host doctrine. Since minors were deemed incompetent to handle alcohol in *Congini*, they were also unable to judge alcohol's effect on other minors. Hence, a minor does not owe a duty of care to another minor in the act of furnishing alcohol at a social setting due to this inability.¹⁰¹ Therefore, according to the present reading of the social host doctrine, minors who host a party will not face liability stemming from the negligent acts of other minors who were furnished alcohol at that party.

Social host liability is unique in its treatment of the negligence of minors. The court in *Congini* asserted that an adult host may assert contributory negligence as a defense to a minor guest's cause of action.¹⁰² However, because minors lack a duty of care to other minors, a cause of action for negligence may not be made against a minor.

In contrast, according to the court in *Kuhns*, persons over the age of fourteen are presumptively capable of negligence.¹⁰³ Although a minor is capable of committing a tort, under the supreme court's interpretation of the social host doctrine, a minor cannot be held liable in negligence for serving alcohol to another minor.¹⁰⁴

The decision in *Kapres* is prudent considering its alternative. If civil liability were to be imposed upon minors, it is doubtful the plaintiff's injuries would be properly and promptly compensated. Minors, in most cases, are, by definition, insolvent. Unless the injury occurs while the minor is driving the family car with the permission of the parents, and the plaintiff can successfully invoke the "Family Purpose Doctrine," the plaintiff's injuries will go uncompensated.¹⁰⁵

Holding a minor host liable, based on negligence *per se*, would

99. *Klein*, 470 A.2d at 510.

100. *Congini*, 470 A.2d at 517.

101. *Kapres*, 640 A.2d at 891.

102. *Congini*, 470 A.2d at 517.

103. *Kuhns*, 135 A.2d at 401.

104. *Kapres*, 640 A.2d at 891.

105. See W. PROSSER & KEETON, PROSSER AND KEETON ON TORTS, § 73 at 524 (5th ed. 1984). The family purpose doctrine imposes liability on the parents for the negligent conduct of minors while operating the family automobile. *Id.* However, the operator of the vehicle must have the permission of the owner in order to hold the owner liable. *Id.* at 525.

not comport with the underlying rationale of negligence *per se*. If a member of a protected class violates the statute protecting him and brings an action against another minor who also violated the statute, then the plaintiff and defendant are equally culpable.¹⁰⁶ According to the Crimes Code, a minor, who possesses, purchases or consumes alcohol, commits a summary offense.¹⁰⁷ The court in *Congini* held that the Crimes Code represented a legislative decision to protect minors from the harmful effects of underage drinking.¹⁰⁸ Thus, if a social host served alcohol to a protected member of that class, then the host would be liable under negligence *per se*.¹⁰⁹

On the other hand, if the host was a minor, the host would be held liable under the Crimes Code for possessing alcohol.¹¹⁰ The guest who receives the alcohol would also be held liable under the Crimes Code for possession.¹¹¹ Therefore, if the guest asserted a cause of action against the host, the guest would be in the same position of culpability as the host.¹¹² The supreme court in *Kapres* followed a similar rationale.¹¹³ The court determined that it was preferable to find no duty on the part of a minor who furnished alcohol to another minor.¹¹⁴ Accordingly, the court in *Kapres* properly decided the issue of social host liability with regards to minors as parties to an action.

Pursuant to the court's ruling in *Kapres*, social host liability only exists in one specific area of the law; namely where an adult host furnishes alcohol to a minor guest.¹¹⁵ Imposing liability upon minors in order to decrease the staggering number of underage drinkers may be an appealing public policy goal; however, in reality, imposition of liability lacks the deterring effect necessary to bring about the desired change.

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106. See PROSSER, cited at 106, § 36 at 232.

107. See 18 PA. CONS. STAT. § 6308(a). See note 16 for the text of section 6308(a).

108. *Congini*, 470 A.2d at 518.

109. *Id.*

110. See 18 PA. CONS. STAT. § 6308(a).

111. *Id.*

112. See PROSSER, cited at note 106, § 36, at 232.

113. *Kapres*, 640 A.2d at 891.

114. *Id.*

115. See *Kapres*, 640 A.2d at 890-91; *Congini*, 470 A.2d at 518.

