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Note

Charles v. Seigfried: Social Host Liability Takes a Back Seat to Judicial Restraint

I. INTRODUCTION

Society has long recognized the seriousness of drunk driving.¹ State courts commonly acknowledge the social costs associated with drunk driving accidents.² Scholars estimate the economic costs of drunk driving to be over twenty billion dollars a year.³ Tragically, statistics show that many drunk driving accidents involve intoxicated minors.⁴ In addition, statistics show that while licensed taverns occasionally serve minors, it is common for private individuals, known as social hosts, to serve alcohol to minors during a party or other social gathering.⁵ All too often, an intoxicated minor leaves the social host’s home and subsequently causes an automobile accident.⁶

¹ See generally Sharon E. Conaway, Comment, The Continuing Search for Solutions to the Drinking Driver Tragedy and the Problem of Social Host Liability, 82 NW. U. L. Rev. 403, 403 (1988) (noting that alcohol related traffic accidents are a leading cause of death in the United States); Larry Kraft, The Drive to Stop the Drinker from Driving: Suggested Civil Approaches, 59 N.D. L. Rev. 391, 392 (1983) (noting the great pressure on state legislatures to promulgate more stringent drunk driving laws); Carla K. Smith, Note, Social Host Liability for Injuries Caused by the Acts of An Intoxicated Guest, 59 N.D. L. Rev. 445, 445 (1983) (illustrating the high rate of fatal car accidents that involve alcohol); Derry D. Sparlin, Jr., Note, Social Host Liability for Guests Who Drink and Drive: A Closer Look at the Benefits and Burdens, 27 WM. & MARY L. Rev. 583, 584 (1986) (noting the increased pressure on state courts and legislatures to deal with the drunk driving problem).


³ Conaway, supra note 1, at 403.

⁴ See Smith, supra note 1, at 447. See also Bonita Brodt, $1 Million Award in Liquor Death, Chi. Trib., Oct. 26, 1995, § 2, at 8 (citing the tragedy of drunk driving accidents that take the lives of teenagers).

⁵ Smith, supra note 1, at 447.

⁶ Id. at 471; see also infra part II.E (discussing the Illinois district split on social
Recognizing these unfortunate consequences, legislatures and courts alike have attempted to resolve the problem of underage drinking.\(^7\) Some state legislatures raised the legal drinking age;\(^8\) some went further by strengthening the criminal penalties for serving alcohol to young people.\(^9\) Additionally, a number of state legislatures imposed statutory duties on social hosts who serve alcohol to minors.\(^10\) Moreover, since the early 1970s, some state courts imposed liability upon social hosts whose intoxicated minor guests cause injuries.\(^11\)

The Illinois Supreme Court recently rejected attempts to adopt civil liability for social hosts who serve minors alcohol.\(^12\) Historically, Illinois courts have denied any attempt to impose liability on social hosts.\(^13\) The long line of precedent in Illinois, however, came to an abrupt end in 1991, when the appellate court in the State's first district held that social hosts could be liable for injuries caused by minor guests.\(^14\) Subsequently, two other appellate courts held that social hosts could be liable, thereby creating a district split and making social host liability the majority rule in Illinois.\(^15\) Resolving this district split,

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7. See infra parts II.B-E.


9. For example, in 1994, the Illinois General Assembly raised the offense of serving alcohol to a minor from a Class B misdemeanor to a Class A misdemeanor. Pub. Act No. 88-613, 1994 Ill. Laws 1339 (codified at ILL. COMP. STAT. ANN. ch. 235, § 5/6-16(b) (West Supp. 1996)).

10. See infra part II.D.

11. See, e.g., Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity, 485 P.2d 18, 23 (Or. 1971) (imposing social host liability based on a general negligence theory). See infra part II.C.


13. See infra part II.B.


the Illinois Supreme Court, in *Charles v. Seigfried*, rejected the appellate court's approach and reinstated the traditional rule against social host liability for minor guests who cause injuries.

This Note critically analyzes the Illinois Supreme Court's decision in *Charles*. First, this Note reviews the history of social host liability in Illinois and other states, focusing primarily on the Illinois courts' interpretations of the Illinois Dramshop Act. This Note then examines the decisions that created the district split in Illinois. Next, this Note discusses the facts and opinions of the Illinois Supreme Court's decision in *Charles v. Seigfried*. This Note then critically analyzes the opinion of the supreme court, considering the court's application of stare decisis, its deference to the General Assembly, and the scope of the decision. This Note then predicts that the General Assembly will acquiesce in the court's decision. Finally, this Note concludes that the Illinois Supreme Court's decision correctly reinstates the traditional rule against social host liability.

II. BACKGROUND

A. The Origins of Alcohol Related Liability: The Common Law and the Illinois Dramshop Act

At common law, a cause of action did not exist against any person who furnished alcohol to any other person. Courts commonly recognized that "a strong and able bodied man" must be responsible for his own actions, even if those actions included intoxication and, subsequently, injuries to third parties. Courts simply reasoned that the

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17. Id. at 159.
18. See infra parts II.A.-D.
19. See infra part II.E.
20. See infra part III.
21. See infra part IV.
22. See infra part V.
23. See infra part VI.
25. Cruse v. Aden, 20 N.E. 73, 74 (III. 1889). See also Joyce v. Haffed, 78 A.2d 754, 756 (Md. 1951). In Joyce, Maryland's highest court declared: Apart from statute, the common law knows no right of action against a seller of intoxicating liquors, as such, for "causing" intoxication of the person whose negligent or wilful wrong has caused injury. Human beings, drunk or sober, are responsible for their own torts. The law (apart from statute)
proximate cause of alcohol-related injuries was not the furnishing of the alcohol, but, rather, the consumption of it. Accordingly, courts did not recognize any cause of action against those who served alcohol.

Historically, Illinois adhered to this rule against the liability of those who served alcohol. In 1872, however, the Illinois General Assembly modified the common law doctrine, enacting a civil remedy against commercial sellers of alcohol. Specifically, the “Dramshop Act” established a cause of action against people who, “by selling or giving intoxicating liquors,” caused the intoxication of another person, who consequently injured a third party. The Dramshop Act reflected the temperance movement of the time. The Act, which was enacted to combat the evils that resulted from alcohol, promoted this temperance movement by aiming to “suppress the mischief of intoxication.”

The Illinois Supreme Court first held that the Dramshop Act did not apply to social hosts in Cruse v. Aden. In Cruse, the plaintiff’s husband was tossed off his horse after having drinks at Aden’s home. The plaintiff claimed that Aden was liable under common law negli-
gence and the new Dramshop Act. The court, however, quickly dismissed the plaintiff’s common law negligence claim, declaring that it was not a tort at common law to serve alcohol to another person. The court recognized that a “strong and able bodied man” had the responsibility to make his own choices.

The court also held that the Dramshop Act applied only to those in the liquor business. The court, considering the title of the Dramshop Act, determined that the Act focused only on the commercial selling of liquor. Moreover, the court, after considering the Act as a whole, found that the legislature must have intended the Act to apply only to dramshops—licensed sellers of alcohol. The court reasoned that the Act was penal in nature and therefore had to be construed strictly in order to avoid extending liability beyond the intent of the legislature.

36. Id. at 74.
37. Id. The Cruse court declared:

It was not a tort at common law to either sell or give intoxicating liquor to “a strong and able bodied man,” and it can be said safely that it is not anywhere laid down in the books that such act was even held at common law to be culpable negligence that would impose legal liability for damages upon the vendor or donor of such liquor.

Id.
38. See id. at 75.
39. Id.
40. Id. The Cruse court reasoned:

The matters contained in ... the provisions in respect to gifts of intoxicating liquor, if limited to those who are in some way connected with the sale of intoxicating liquor, legitimately appertain and are germane to the subject expressed in the title of the act, but in respect to mere gifts of liquor by persons not connected directly or indirectly with the liquor traffic, or with any sale of liquor, it cannot be fairly said such gifts by them are embraced or expressed in such title.

Id. The title of the original act read: “AN ACT to provide against the evils resulting from the sale of intoxicating liquors in the state of Illinois.” 1871 Ill. Laws 552.
41. Cruse, 20 N.E. at 75-76. The court held:

It is but reasonable to presume, since there is nothing in the context to rebut such presumption, and it is in conformity with the title and general scope of the act, that the legislature, in using these words “give” and “giving” in these three sections of the same act, intended they should have one and the same meaning. Since the expression, “the giving away of intoxicating liquors,” found in section 13 [of the Act] has reference only to those who are engaged or participate in the liquor traffic ... we may conclude ... the expression “against any person or persons who shall by selling or giving intoxicating liquors,” found in section 9, have a like restricted sense and signification [sic].

Id. at 76.
42. Id. at 77.
B. Modern Interpretations of the Dramshop Act
Under the Liquor Control Act

After the decision in *Cruse*, which held that the Dramshop Act applied only to sellers of alcohol, the Illinois Supreme Court decided the landmark case of *Cunningham v. Brown*. In *Cunningham*, the court considered the Dramshop Act as it appeared under Illinois' newly enacted liquor statute, known as the Liquor Control Act of 1934. The plaintiff, whose husband committed suicide from alcohol-induced despondency, commenced an action against the defendant tavern. Because the defendant was a tavern, the plaintiff's first claim came under the Dramshop Act. In an effort to increase her pecuniary recovery, the plaintiff also claimed that the defendant had served her husband in violation of the Liquor Control Act and, therefore, was civilly liable to the plaintiff. Finally, the plaintiff argued that the defendant should be liable under common law negligence.

The court rejected the plaintiff's claim based on a violation of the Liquor Control Act, holding that only the Dramshop Act created a civil remedy under the Liquor Control Act. Interpreting the original Act

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44. Id. at 154. In 1934, the Illinois General Assembly adopted a new regulatory scheme for alcohol, known as the Liquor Control Act, which is still the current law. 1933-34 Ill. Laws 57 (codified at ILL. COMP. STAT. ANN. ch 235, §§ 5/1-11 (West 1992) (amended 1995)). The current law comprises much of the original act of 1872, including the remedy established in § 5 and interpreted by the *Cruse* court. ILL. COMP. STAT. ANN. ch. 235, § 5/6-21 (West 1992). The act also includes various criminal penalties for those that serve alcohol to minors and certain other people. ILL. COMP. STAT. ANN. ch. 235, § 5/6-16 (West 1992) (amended by Pub. Act No. 89-250, § 5, 1995 Ill. Legis. Serv. 3009-10 (West)).
46. Id. at 155. At the time of *Cunningham*, the recovery under the Dramshop Act was limited to $15,000. Id.
47. Id. Under Illinois law, a person can be civilly liable for injuries caused during the violation of a criminal statute. First Nat'l Bank v. City of Aurora, 373 N.E.2d 1326, 1330 (III. 1978). In *First Nat'l Bank*, the Illinois Supreme Court held "that the party injured thereby has a cause of action, provided he comes within the purview of the particular ordinance or statute, and the injury has a direct and proximate connection with the violation." Id. (quoting Dini v. Naiditch, 170 N.E.2d 881, 886 (III. 1960)). See also W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 36, at 224-27 (5th ed. 1984) (noting that a violation of statute creates a civil cause of action when the statute protects the class of the plaintiff and prevents the specific harm suffered by the plaintiff).
49. *Cunningham*, 174 N.E.2d at 156. The trial court, though dismissing the plain-
of 1872, the Cunningham court determined that the General Assembly had intended to create only one remedy as embodied in the Dramshop Act. The General Assembly, the Cunningham court concluded, never intended the Dramshop Act to complement a latent remedy against social hosts. The court reasoned that the General Assembly's choice to enact the original Dramshop Act illustrated that the common law never included a cause of action against a person who served alcohol. The Cunningham court concluded that the original Dramshop Act remained the only remedy in the modern Liquor Control Act. Thus, because the remedy was exclusive, the plaintiff could not recover under any other section of the Liquor Control Act, and the defendant could not be civilly liable for the statutory violation of the Liquor Control Act.

In addition to determining the exclusiveness of the remedies available under the Dramshop Act, the Cunningham court also denied the plaintiff's claim under common law negligence. The court reasoned that the General Assembly had intended to create a remedy against the servers of alcohol because such a remedy did not exist at common law. The court concluded that the General Assembly enacted the plaintiff's common law claim and violation of statute claim, did not dismiss the plaintiff's claim under the Dramshop Act. Id. at 154.

50. Id. at 155-56. After considering the history of the Illinois temperance movement, the court declared:

A reading of the act of 1872 also leads to the conclusion that section 5 was not intended to provide a remedy in addition to a civil remedy for the violation of section 2. These two sections together with eight other sections of the act were all enacted at the same time. The legislature in sections 6, 8 and 9 carefully laid out the procedure to be followed and the court in which an action should be brought for the violation of section 2 or for an action arising under section 5. A civil remedy was not left to inference but was carefully spelled out in section 5.

Id. at 156. The court then concluded that the civil remedy under the Liquor Control Act "provides the only civil remedy under our present act." Id.

51. Id. at 157.
52. Id. at 156.
53. Id. at 157. See supra note 50 and accompanying text.
55. Id.
56. Id. at 157.
57. Id. at 156. The court stated:

We would be delving in judicial metaphysics if we were to say that the legislature intended to provide a remedy in addition to a common law remedy which existed but had not as yet been declared by the courts. Legislative intent must be ascertained through examination of the practical considerations to which the legislature directed itself when enacting section 5 of the original statute. . . . The inescapable conclusion is that the legislature did not intend the act to be complementary to a common-law right it knew nothing about,
only available remedy against those who serve alcohol, thereby preempting alcohol related common law liability in Illinois. Accordingly, the court refused to adopt a common law remedy against those who furnish alcohol.

For many years, Illinois courts consistently followed the interpretation of the Dramshop Act established in Cunningham. For example, the Illinois Supreme Court, in Demchuk v. Duplancich, held that a plaintiff could recover against a seller of alcohol only under the Dramshop Act. In Demchuk, the plaintiff commenced an action against a tavern owner, but he was unable to recover under the Dramshop Act because the statute of limitations had expired. Attempting to find a different cause of action, the plaintiff argued that the commercial seller should be civilly liable because the seller violated the Liquor Control Act's prohibition on serving alcohol to minors. The court rejected this effort to recover, holding that the Dramshop Act was the exclusive remedy under the Liquor Control Act.

Illinois courts also consistently adhered to the preemptory effect of the Dramshop Act over any common law claims. For instance, in

but, on the contrary, intended to create a remedy in an area where it believed none existed.

Id.

58. Id. The Cunningham court established that the lack of a common law remedy against those who furnish alcohol "motivated our legislature . . . to create such liability." Id. at 157. The legislature, however, created such liability only against commercial sellers of alcohol. Id.

59. Id.

60. See, e.g., Knierim v. Izzo, 174 N.E.2d 157, 160 (Ill. 1961); Estate of Ritchie v. Farrell, 572 N.E.2d 367, 369 (Ill. App. 3d Dist. 1991). In Estate of Ritchie, the court stated: "The sole remedy available to a plaintiff seeking damages resulting from intoxication is provided by the Dramshop Act, under which the uncompensated social host is clearly not liable." Id. at 369.

61. 440 N.E.2d 112 (Ill. 1982).

62. Id. at 114.

63. Id. at 113-16. The court declared that "the special one year limitation in the Dramshop Act is a condition precedent to the right of recovery which must be observed by all plaintiffs in order to bring themselves within the Act." Id. at 116.

64. Id.

65. Id. Following the reasoning of Cunningham, the court stated: "The lack of a common law remedy motivated our legislature . . . to create such liability. Hence, the liability imposed, which does not depend upon fault or negligence, and the damages recoverable are expressly and exclusively defined in the Act." Id. at 114 (citations omitted). As a consequence of the court's decision, the plaintiff was without any remedy for his injuries. Id. at 117.

Coulter v. Swearingen, an appellate court held that social hosts could not be liable under common law negligence for the injuries caused by an intoxicated minor. Rejecting the plaintiff’s argument that the Dramshop Act should not preempt common law based alcohol-related liability in Illinois, the Coulter court explicitly followed the doctrine established in Cunningham. The court concluded that only the legislature could change the rule against social host liability.

C. Social Host Liability in the Courts of Other States

Similar to the courts in Illinois, many other state courts have refused to create a remedy against social hosts whose minor guests have caused injury. In Bankston v. Brennan, for example, the Florida Supreme Court refused to create such a common law cause of action. The plaintiff, claiming that the social host had violated the State’s liquor act, argued that the social host was liable. Rejecting the plaintiff’s claim, the court noted that the state legislature had limited liability for alcohol-related injuries only to vendors. Moreover, the court recognized that the legislature had actively entered the field of alcohol-

68. Id. at 564.
69. Id. at 563.
70. Id. at 564. Holding that the Dramshop Act preempted alcohol-related remedies and that the judiciary should not change the law, the Coulter court affirmed the trial court’s dismissal of the plaintiff’s common law claim for a failure to state a cause of action. Id. at 562-64. The court emphasized the importance of the Cunningham decision. Id. at 563. The court noted that it had “directed considerable attention to Cunningham for the reason that it is a landmark case pertaining to the Dram Shop Act and that it clearly establishes that it (the Act) has preempted the field of liability relating to alcohol.” Id.

Illinois courts have often held that any change in social host liability in Illinois must come from the legislature. See, e.g., Estate of Ritchie, 572 N.E.2d at 369-70; Puckett, 529 N.E.2d at 1170; Zamiar, 478 N.E.2d at 536; Lowe, 424 N.E.2d at 714; Miller, 412 N.E.2d at 1049.
71. See, e.g., Harriman v. Smith, 697 S.W.2d 219, 220 (Mo. Ct. App. 1985) (refusing to recognize a cause of action against social hosts under the violation of statute); Graff v. Beard, 858 S.W.2d 918, 920-22 (Tex. 1993) (refusing to extend common law negligence principles to social host liability); Williamson v. Old Brogue, Inc., 350 S.E.2d 621, 623-24 (Va. 1986) (allowing a remedy under the common law or the violation of the state’s liquor control act).
72. 507 So. 2d 1385 (Fla. 1987).
73. Id. at 1387.
74. Id. at 1386. In Bankston, the plaintiff argued that the defendant social host had served alcohol to a minor, thereby violating section 768.125 of the Florida code. Id. (citing Fla. Stat. ch. 768.125 (1987) (which allows vendors to be held liable for injury or damages resulting from their selling or furnishing alcohol to minors)).
75. Id. at 1386-87.
related liability and had never imposed social host liability. The court held that the legislature had the sole responsibility for enacting social host liability.

Unlike the court in Bankston, some state courts have determined that the violation of a liquor act permits a plaintiff to recover against a social host. For example, in Hansen v. Friend, the Washington Supreme Court held that a social host who served a minor in violation of a liquor statute could be held civilly liable for injuries sustained by the minor. First, the court acknowledged that the Washington judiciary could adopt a statute as a measure of a reasonable person's conduct. The court then determined that the legislature enacted the liquor statute to protect the interests of minors, and prevent injuries caused by intoxicated minors. Because the social host should have foreseen the injuries caused by the intoxicated minor, the court reasoned, the defendant could be civilly liable for violating the liquor statute.

76.  ld. at 1387. The court did not deny that it had the power to create social host liability, but held that "when the legislature has actively entered a particular field and has clearly indicated its ability to deal with such a policy question, the more prudent course is for this court to defer to the legislative branch." ld.

77.  ld. The court explained that "of the three branches of government, the judiciary is the least capable of receiving public input and resolving broad public policy questions." ld. at 1387 (citing Shands Teaching Hosp. and Clinics, Inc. v. Smith, 497 So.2d 644, 646 (Fla. 1986)). The Bankston court's deference to the state legislature represents the reasoning used by many courts in their refusal to adopt social host liability. See, e.g., Harriman v. Smith, 697 S.W.2d 219, 221 (Mo. Ct. App. 1985); Williamson v. Old Brogue, Inc., 350 S.E.2d 621, 623-24 (Va. 1986).


79. 824 P.2d 483 (Wash. 1992). In Hansen, the social host violated § 66.44.270(1) of the Washington code, which makes it a crime to serve alcohol to a minor. ld. (citing WASH. REV. CODE § 66.44.270(1) (1992)).

80.  ld. at 485.

81.  ld. at 485. If the judiciary chose to adopt a statute as the reasonable degree of conduct, then a violation of such a statute constitutes negligence. The court noted that Washington courts use the test set out in the Restatement (Second) of Torts when deciding whether to adopt the requirements of a particular legislative enactment as a standard of conduct for reasonable persons. ld. The test sets out that the legislative requirements may be adopted when the purpose of the enactment is the following:

(a) to protect a class of persons which includes the one whose interest is invaded, and
(b) to protect the particular interest which is invaded, 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.
ld. (quoting the RESTATEMENT (SECOND) OF TORTS § 286 (1965)).

82.  ld. at 485-86.

83.  ld. at 487. The court noted that "the concept of foreseeability determines the
Accordingly, the court held that a jury could find the social hosts civilly liable for the minor's injuries. 84
Other state courts that have created social host liability have not referenced any statute, and have simply held that a social host whose minor guests caused injuries may be civilly liable under common law negligence. 85 In Hart v. Ivey, 86 the North Carolina Supreme Court imposed civil liability on a social host because the social host did not exercise a reasonable degree of care. 87 The court determined that the defendant had knowingly served alcohol to an intoxicated minor, and had permitted the minor to drive home. 88 The court held that a person of “ordinary prudence” could reasonably foresee that an intoxicated minor was likely to cause an accident. 89 Recognizing that a jury could find that the furnishing of alcohol proximately caused the accident, 90 the court held that the defendant was liable under common law negligence despite the absence of a violation of any statute. 91

D. Legislative Policies

While the courts in many states have created social host liability, a number of state legislatures have also enacted statutory duties for social hosts. 92 The Colorado legislature, for instance, modified the traditional common law principle that the consumption of alcohol, rather than the furnishing of it, is the proximate cause for all alcohol-related

scope of the duty owed,” and that the question of whether the defendant’s injuries were foreseeable is for the trier of fact to decide. Id.
84. Id. at 488.
86. 420 S.E.2d 174 (N.C. 1992). North Carolina’s highest court explicitly declared that the state’s dramshop act “does not abrogate any claims for relief under the common law.” Id. at 178.
87. Id. at 177-78. In North Carolina, people are liable under common law negligence if they fail to exercise “that degree of care which a reasonable and prudent person would exercise under similar conditions. A defendant is liable for his negligence if the negligence is the proximate cause of injury to a person to whom the defendant is under a duty to use reasonable care.” Id.
88. Id. at 178.
89. Id.
90. Id.
91. Id.
injuries.\textsuperscript{93} The Colorado legislature enacted a civil remedy against social hosts when a social host “willfully and knowingly” serves alcohol to any minor.\textsuperscript{94} Although the Colorado courts have narrowly construed this statute, the civil remedy nevertheless evinces a clear intent of the legislature to create a remedy against social hosts who serve minors.\textsuperscript{95}

Unlike the Colorado legislature, the California legislature explicitly abrogated a decision that permitted a plaintiff to recover against a social host.\textsuperscript{96} In the 1978 case of \textit{Coulter v. Superior Court},\textsuperscript{97} the California Supreme Court held that a social host could be civilly liable for injuries caused by either a minor or adult guest.\textsuperscript{98} The court interpreted the State’s Dramshop Act to impose liability on commercial vendors and social hosts alike.\textsuperscript{99} The California legislature immediately responded, explicitly overruling the \textit{Coulter} decision.\textsuperscript{100} The legislature’s amended statute recognized that a person’s consumption of alcohol, rather than the serving of alcohol, is the proximate cause of any injuries the intoxicated person causes.\textsuperscript{101}


\textsuperscript{94} \textsc{Colo. Rev. Stat. Ann.} § 12-47-128.5. \textit{See also} GA. CODE ANN. § 51-1-40(b) (Supp. 1995) (permitting recovery against a social host when the host “willfully and knowingly” serves alcohol to a minor who will drive intoxicated).

\textsuperscript{95} Forrest v. Lorrigan, 833 P.2d 873, 874 (Colo. Ct. App. 1992). In Forrest, a Colorado appellate court determined that a social host was not liable under § 12-47-128.5, despite the social host’s knowledge that intoxicated minors were consuming alcohol in her home. \textit{Id.} The court held that the requisite willfulness and knowledge only exist when the “social host has control over or takes an active part in supplying a minor with alcohol.” \textit{Id.} at 875.

\textsuperscript{96} Stats. 1978, c. 929, p. 2903, § 1 (codified at \textsc{cal. Bus. & Prof. Code} § 25602 (West 1985 & Supp. 1996)).

\textsuperscript{97} 577 P.2d 669 (Cal. 1978).

\textsuperscript{98} \textit{Id.} at 673.

\textsuperscript{99} \textit{Id.}

\textsuperscript{100} \textsc{cal. Bus. & Prof. Code} § 25602(c). The California statute states:

The legislature hereby declares that this section shall be interpreted so that the holdings in cases such as . . . \textit{Coulter v. Superior Court} . . . be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.

\textit{Id.}

\textsuperscript{101} \textit{See supra} note 100 and accompanying text.
E. The Illinois District Split

The Illinois General Assembly has consistently refused to enact social host liability. As recently as 1994, the Illinois General Assembly proposed a bill that included a remedy against social hosts whose intoxicated minor guests cause injuries. Although much of the bill passed both houses, the portion that imposed social host liability died in committee. Attempts to reinsert the social host portion also failed. Though the General Assembly did enact a remedy against those who rent motel rooms for the unlawful consumption of alcohol by minors, the General Assembly has denied any effort to enact a general remedy against social hosts.

Similarly, the Fourth and Fifth Illinois Appellate Districts rejected social host liability. The Fourth Appellate District, in Miller v. Moran, held that the Dramshop Act preempted any common law claims. In addition, the Fifth Appellate District, in Holtz v. Amax Zinc Co., also rejected a common law cause of action against a non-commercial supplier of alcohol.

Although the Illinois General Assembly had failed to enact social host liability, and two Illinois appellate courts had recently rejected the argument, an Illinois appellate court created such liability in 1991. Radically departing from traditional Illinois principles, the First Appel-


105. Charles II, 651 N.E.2d 154, 162-63 (Ill. 1995). Six bills introduced into the General Assembly that would have created a cause of action against social hosts were all blocked in either the House or the Senate. Id. See supra notes 102-04 and accompanying text.

106. Charles II, 651 N.E.2d at 163. See supra note 102 and accompanying text. The General Assembly enacted a civil remedy for any person injured by a minor that consumed alcohol at a motel rented for the express purpose of the unlawful consumption of alcohol by that minor. Pub. Act No. 84-1380, 1986 Ill. Laws 3139 (codified at ILL. COMP. STAT. ANN. ch. 235, § 5/6-21(a) (West 1992)).


108. Id. at 1049.

109. 519 N.E.2d 54 (Ill. App. 5th Dist. 1988).

110. Id. at 57-58.

111. See infra notes 112-40 and accompanying text.
late District in *Cravens v. Inman* held that social hosts could be liable for the injuries caused by their intoxicated minor guests. In *Cravens*, Joleen Cravens died in a car accident when an intoxicated minor lost control of the vehicle in which Joleen was a passenger. The plaintiff, Joleen’s father, claimed that the social host was civilly liable because the defendant violated the Liquor Control Act and the Illinois Premises Liability Act.

Before addressing the plaintiff’s two substantive claims, the *Cravens* court dismissed many of the traditional arguments against imposing social host liability. First, the court determined that the Dramshop Act does not explicitly preempt the common law development of social host liability. Furthermore, the court declared that the reasoning employed in *Cunningham* did not address social host liability. Rather, the court concluded, because the Liquor Control Act did not include any social host liability provision, the legislature certainly did not originally intend to preempt any latent common law remedy against social hosts.

After rejecting the preemption argument, the *Cravens* court modified the traditional common law rule against social host liability. Refusing to accept the defendant’s claim that the legislature is more properly positioned to change the rule, the court noted the judiciary’s responsibility under the common law.

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114. *Id.* at 369.
115. *Id.* at 370. The plaintiff argued that the defendant social host violated § 6-16(c) of the Liquor Control Act, which makes it a crime to serve alcohol to minors. *Id.* at 371 (citing *ILL. COMP. STAT. ANN.* ch. 235, § 5/6-16 (West 1992)). *See infra* note 131. *See also supra* note 47 (discussing civil liability for the violation of a statute).
117. *Id.* at 375.
118. *Id.* The court dismissed the preemption argument made in *Cunningham*. *Id.* The court declared that the “Dram Shop Act and the Liquor Control Act contain no provision regarding social host liability. As a result, we cannot say that these statutes disclose a legislative intent to create or abrogate a common law remedy for the facts presented herein.” *Id.*
119. *Id.* at 375-76. *See supra* note 118 and accompanying text.
120. *Cravens*, 586 N.E.2d at 376-78.
121. *Id.* at 376. The *Cravens* court, bolstering its position on the role of the
law is of judicial origin and must be adjusted to reflect the changing needs of society. Consequently, the Cravens court changed the long-standing Illinois rule that the consumption of alcohol was the only proximate cause of any injury caused by an intoxicated person. The court reasoned that a minor, unlike "an able bodied man," could not responsibly consume alcohol. Accordingly, it held that a person who furnished alcohol to a minor could proximately cause injuries resulting from the actions the intoxicated minor.

The court also dismissed the defendant's claim that stare decisis should prevent the court from departing from precedent. Although the Cravens court demonstrated respect for that legal doctrine, the court nevertheless noted that stare decisis does not make the law static; rather, stare decisis has never completely prohibited the development of common law principles. Moreover, the court declared that the

judiciary, noted:

We find no wisdom in abdicating to the legislature our essential function of reevaluating our common law concepts in the light of present day realities. Nor do we find judicial sagacity in continually looking backward and parroting the words and analyses of other courts so as to embalm for posterity the legal concepts of the past.

Id. at 377 (quoting Dini v. Naiditch, 170 N.E.2d 881, 892 (Ill. 1960)).

122. Id. at 376.

123. Id. at 375-76. The court stated that "the injustice of the present jurisprudence places upon this court the imperative duty to rectify that injustice through reevaluation of our current legal precedent." Id. at 376. Recognizing the ability of the judiciary to develop the common law, the Cravens court noted that many other state courts have judicially imposed social host liability. Id. at 374. The court called this the "prevailing view." Id. at 379. The court, arguing that few courts have deferred to their legislatures on this issue, listed many of these judicial decisions. Id. at 374-75. The court further determined that the legislature and the judiciary should "exercise a shared responsibility to cooperatively develop the common law in response to the changing needs of our society." Id. at 376.

124. Id. at 377.

125. Id. at 378. The court recognized that this change in the common law reflects the contemporary ideas about youth and alcohol. Id.

126. Stare decisis is the judicial policy to stand by precedents and not disturb that which is settled. See Black's Law Dictionary 1261 (5th ed. 1979).

127. Cravens, 586 N.E.2d at 377. Illinois courts have often noted that the consistency in the law created an obstacle to imposing social host liability. See generally Estate of Ritchie v. Farrell, 572 N.E.2d 367, 369 (Ill. App. 3d Dist. 1991) (citing Olsen v. Copeland, 280 N.W.2d 178, 181 (Wis. 1979) (claiming that any change in the law will deeply affect social and business relationships)); Puckett v. Mr. Lucky's Ltd., 529 N.E.2d 1169, 1170 (Ill. App. 4th Dist. 1988) (recognizing that any change in the law could create social and economic havoc).

128. Cravens, 586 N.E.2d at 376-77. While the court conceded that stare decisis is based on long standing principles, the court did note:

[I]t is equally well established that stare decisis is not so static that it deprives the court of all power to develop the law. Moreover, the maintenance of
judiciary has an obligation to change precedent that is not consonant with the current needs of society. The Cravens court added that the importance of its decision outweighed the chaos that might result from a district split in Illinois.

After dismissing the traditional obstacles against imposing social host liability, the Cravens court addressed the merits of the plaintiff’s claim based on section 6-16 of the Liquor Control Act, which forbids persons from giving or selling alcohol to minors. The court held that the plaintiff fell within the purview of the statute, as the legislature intended the section to protect minors from the dangers of alcohol, and to prevent tragic automobile accidents that involve intoxicated minors. The court then held that the defendant knew or should have

stability in our legal concepts does not and should not occupy a preeminent position over the judiciary’s obligation to reconsider legal rules that have become inequitable in light of the changing needs of our society.

Id. at 377 (citations omitted).

129. See supra note 121 and accompanying text.
130. Cravens, 586 N.E.2d at 377. The court held:

In our view, the concerns suggested by defendant are greatly outweighed by the economic and social devastation on society that occurs when social hosts, as alleged in the instant cause, knowingly permit minor guests at a social gathering to consume alcohol to the point of inebriation, and allow the minor guests to depart from the gathering by driving a motor vehicle while intoxicated.

Id.

131. Id. at 378-79. The plaintiff brought his claim under §§ 6-16(a) and (c). ILL. COMP. STAT. ANN. ch. 235, § 5/6-16 (West 1992), amended by Pub. Act No. 89-250, § 5, 1995 Ill. Legis. Serv. 3009 (West). The relevant portion of subsection (a) reads:

No person, after purchasing or otherwise obtaining alcoholic liquor, shall sell, give or deliver such alcoholic liquor to another person under the age of 21 years, except in the performance of a religious ceremony or service. Any person who violates the provisions of this paragraph of this subsection (a) is guilty of a Class A misdemeanor and the person’s sentence shall include, but shall not be limited to, a fine of not less than $500.

ILL. COMP. STAT. ANN. ch. 235, § 5/6-16(a). The other relevant portion of subsection (c) reads:

Any person shall be guilty of a Class A misdemeanor where he or she knowingly permits a gathering at a residence which he or she occupies of two or more persons where any one or more of the persons is under 21 years of age and the following factors also apply:

(1) the person occupying the residence knows that any such person under the age of 21 is in possession of or is consuming any alcoholic beverage; and
(2) the possession or consumption of the alcohol by the person under 21 is not otherwise permitted by this Act; and
(3) the person occupying the residence knows that the person under the age of 21 leaves the residence in an intoxicated condition.

ILL. COMP. STAT. ANN. ch. 235, § 5/6-16(c).

132. Cravens, 586 N.E.2d at 379. See First Nat’l Bank v. City of Aurora, 373 N.E.2d 1326, 1330 (Ill. 1978) (declaring that a person can be civilly liable for the violation of
known that serving alcohol to minors could result in an automobile accident.\textsuperscript{133} Accordingly, the court concluded that the social host could be civilly liable under the violation of statute.\textsuperscript{134}

The \textit{Cravens} court then addressed the plaintiff's claim under the Illinois Premises Liability Act.\textsuperscript{135} This statute requires landowners to use reasonable care regarding the premises and the acts done on such premises.\textsuperscript{136} The court found that the social host did not exercise such reasonable care.\textsuperscript{137} On the contrary, the court determined that the social host served alcohol to a number of minors and permitted the minors to serve each other.\textsuperscript{138} Moreover, the court stated that the defendant knew most of the minors had arrived at the party by automobile.\textsuperscript{139} Therefore, the court reasoned, the social host could be civilly liable under the Premises Liability Act.\textsuperscript{140}

Persuaded by the opinion of the \textit{Cravens} court, the Third District Illinois Appellate Court, in \textit{Charles v. Seigfried} ("Charles I"),\textsuperscript{141} recognized social host liability as a valid cause of action. In \textit{Charles I}, the court held that the defendant social host could be civilly liable for violating section 6-16 of the Liquor Control Act during a social gathering.\textsuperscript{142} In addition, the court indicated that the defendant may not have acted reasonably upon his own premises in violation of the Premises Liability Act.\textsuperscript{143} Dismissing the defendant's arguments about the role of \textit{stare decisis}, the court held that the statute at issue protected the mi-

\begin{itemize}
\item a criminal statute if the statute protects the class of the plaintiff and aims to prevent the specific harm suffered by the plaintiff).
\item 133. \textit{Cravens}, 586 N.E.2d at 378. Because foreseeability is vital to a violation of statute analysis, the court limited liability to the following fact specific scenario:
\begin{enumerate}
\item a social host has knowingly served alcohol, and permits the liquor to be served, to youths under 18 years of age at the social host's residence, (2) the social host permits the minors' consumption to continue to the point of intoxication, and (3) the social host allows the inebriated minors to depart from the residence in a motor vehicle.
\end{enumerate}
\item 134. \textit{Id.} at 377-78.
\item 135. \textit{Id.} at 378.
\item 137. \textit{Cravens}, 586 N.E.2d at 378.
\item 138. \textit{Id.}
\item 139. \textit{Id.}
\item 140. \textit{Id.}
\item 141. 623 N.E.2d 1021 (Ill. App. 3d Dist. 1993), \textit{rev'd}, 651 N.E.2d 154 (Ill. 1995); \textit{see supra} note 15.
\item 142. \textit{Id.} at 1024.
\item 143. \textit{Id.} at 1022. The plaintiff alleged in Count 1 of his complaint that the defendant violated the Premises Liability Act. \textit{Id.} The court held that such a claim stated a cause of action. \textit{Id.} at 1025.
\end{itemize}
nors from alcohol and prevented injuries caused by intoxicated drivers.\textsuperscript{144} The court then accepted the new rule, established in \textit{Cravens}, which recognized that the furnishing of alcohol to minors could be the proximate cause of any injuries resulting from the actions of the intoxicated minor.\textsuperscript{145} Therefore, the \textit{Charles I} court declared, social hosts could be civilly liable for violations of the Liquor Control Act and the Premises Liability Act.\textsuperscript{146}

Deepening the district split even further, the Second District Appellate Court, in \textit{Bzdek v. Townsley},\textsuperscript{147} also held that a social host could be liable for the injuries caused by a minor guest.\textsuperscript{148} In \textit{Bzdek}, the plaintiff argued that the defendant social host violated section 6-16 of the Liquor Control Act and, therefore, was civilly liable.\textsuperscript{149} The court reasoned that the defendant's statutory violations could have proximately caused the plaintiff's injuries.\textsuperscript{150} Although the court did recognize the growing district split, the court, nevertheless, acknowledged the correctness of the \textit{Cravens} decision.\textsuperscript{151}

Thus, after the \textit{Bzdek} decision, the five Illinois appellate district courts stood divided on the issue of social host liability. The First,\textsuperscript{152} Second,\textsuperscript{153} and Third\textsuperscript{154} Districts held in favor of social host liability, while the Fourth\textsuperscript{155} and Fifth\textsuperscript{156} Districts rejected the theory.

\textsuperscript{144} \textit{Id.} at 1024. The \textit{Charles I} court applied the traditional Illinois rule when deciding if the violation of a statute constituted \textit{prima facie} evidence of negligence and noted that a minor does not qualify as an "able-bodied man" under the traditional rule. \textit{Id.} See \textit{supra} note 115 and accompanying text (discussing the Premises Liability Act).
\textsuperscript{145} \textit{Charles I}, 623 N.E.2d at 1024-25. The court conceded that it did "not undertake lightly the overturning of longstanding precedent." \textit{Id.} at 1024. Nevertheless, the court did recognize that the court had the duty to conform the common law to the changing needs of society. \textit{Id.} Because "[i]nexperience, peer pressure, physical and psychological differences aggregate to distinguish" minors from adults, the "able-bodied man" principle, which places the responsibility of alcohol consumption on the person consuming, is not dispositive of the case at bar. \textit{Id.}
\textsuperscript{146} \textit{Id.} at 1025.
\textsuperscript{148} \textit{Id.} at 395.
\textsuperscript{149} \textit{Id.} at 390-91 (setting out the elements of § 6-16 of the Liquor Control Act). See \textit{supra} note 131 and accompanying text.
\textsuperscript{150} \textit{Bzdek}, 634 N.E.2d at 391-93.
\textsuperscript{151} \textit{Id.} at 392. The court remanded the case to the trial court for further proceedings. \textit{Id.} at 394.
\textsuperscript{152} \textit{Cravens}, 586 N.E.2d at 377.
\textsuperscript{153} \textit{Bzdek}, 634 N.E.2d at 395.
\textsuperscript{154} \textit{Charles I}, 623 N.E.2d at 1024.
\textsuperscript{156} Holtz \textit{v. Amax Zinc Co.}, 519 N.E.2d 54, 58 (Ill. App. 5th Dist. 1988).
III. DISCUSSION

The Illinois Supreme Court, in Charles v. Seigfried\(^{157}\) ("Charles II"), resolved the issue of whether a social host whose intoxicated minor guests cause injuries may be held liable for these injuries.\(^{158}\) The court’s decision consolidated the issues and facts presented in the two cases that had deepened the district split, Charles I and Bzdek.\(^{159}\) In the consolidated appeal, the Illinois Supreme Court reversed the appellate courts’ holding that social hosts could be civilly liable for injuries caused by their intoxicated minor guests.\(^{160}\) The court, despite a two justice dissent, held that social hosts cannot be held liable for the injuries caused by any intoxicated guest.\(^{161}\)

A. The Facts and the Lower Courts’ Opinions

Lynn Sue Charles’s parents sued Alan Seigfried after sixteen-year-old Lynn Sue was killed in a car crash upon leaving Seigfried’s party, where he served alcohol to Lynn Sue.\(^{162}\) Alan Seigfried, an adult, hosted the party at his home on the evening of February 15, 1991.\(^{163}\) Lynn Sue Charles attended the party with a number of friends.\(^{164}\) Seigfried supplied alcohol to the minors and encouraged the minors to drink, despite Seigfried’s knowledge that the minors had driven to the party.\(^{165}\) After consuming the alcohol, the minors became intoxicated but, nevertheless, decided to drive home.\(^{166}\) Lynn Sue Charles died in an automobile accident during the drive home.\(^{167}\)

Claiming that the social host was civilly liable for the death of his daughter, the father of the decedent filed suit in the Circuit Court of Hancock County.\(^{168}\) Specifically, the plaintiff claimed that the defendant was liable under the Premises Liability Act and violations of the Liquor Control Act.\(^{169}\) The court granted the defendant host’s motion

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\(^{157}\) 651 N.E.2d 154 (III. 1995).

\(^{158}\) Id. at 155.

\(^{159}\) Id. at 155-56.

\(^{160}\) Id. at 165.

\(^{161}\) Id. at 159.

\(^{162}\) Id. at 155.

\(^{163}\) Id.

\(^{164}\) Id. at 155-56.

\(^{165}\) Id. at 155. See also Charles I, 623 N.E.2d at 1022 (setting out the facts of Charles I).

\(^{166}\) Charles II, 651 N.E.2d at 156. "Lynn Sue had a blood alcohol content of 0.299 at the time of her death." Id.

\(^{167}\) Id.

\(^{168}\) Id. at 155.

\(^{169}\) Id. at 156.
to dismiss for failure to state a cause of action. On appeal, however, the appellate court for the Third District reversed, holding that social hosts could be held liable for injuries caused by their intoxicated minor guests.

Similarly, in Bzdek, Susan Townsley and her sister were sued based upon the theory of social host liability. The sisters hosted a party at their home on September 15, 1990. The hosts served alcohol to Paula Bzdek and other minors, despite the hosts’ knowledge that their guests were minors. Many of the minors drank to intoxication, and with the knowledge of the social host, departed the gathering in their automobiles. Bzdek suffered serious injuries in an automobile accident during the drive home.

Bzdek filed suit in Lake County, claiming that the social host was liable for her injuries. The plaintiff argued that the defendant should be held liable under violations of the Liquor Control Act. The circuit court dismissed the action. On appeal, the appellate court reversed, holding that social hosts can be liable for the injuries of their minor guests.

B. The Supreme Court’s Decision

1. The Majority Decision

On the consolidated appeal the Supreme Court of Illinois reversed both appellate court decisions, and held that social hosts cannot be civilly liable for injuries caused by their guests. In Charles II, the court reaffirmed that the Dramshop Act preempted all alcohol related common law liability in Illinois, and held that the Dramshop Act provides the exclusive remedy under the Liquor Control Act. In addi-

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171. See supra notes 141-46 and accompanying text.
173. Id.
174. Id. At the time of the accident, Paula Bzdek was age 15, and the driver of the car, David Duff, was age 18. Id.
175. Id.
176. Id. According to Bzdek, she allowed herself to be transported by Duff because of her own inebriation. Id.
177. Id.
178. Id. at 394.
179. Id. at 390.
180. Id. at 395.
182. Id. at 157-58. Declaring that no common law claim of social host liability
tion, the court, relying on *stare decisis*, determined that the judiciary was ill-equipped to modify the traditional rule against social host liability, noting that any judicial change in the law would be a usurpation of the legislative power. The court further noted that the General Assembly addressed and made efforts to remedy the problem of minor drinking, and expressly decided against imposing civil liability on social hosts. Finally, the court rejected a number of the dissent's arguments.

The *Charles II* court dismissed the plaintiff's common law claim, ruling that the Dramshop Act preempts all alcohol-related liability. The court explained that in *Cruse*, the Illinois Supreme Court declared that social host liability did not exist under the common law. Rather, as the *Cruse* court stated, the only cause of action against a commercial seller was purely statutory. Next, citing the *Cunningham* decision, the court established the preemptory effect of the Dramshop Act, a rule of law that Illinois courts have consistently followed. Because the Dramshop Act preempts the common law development of alcohol related liability, the *Charles II* court held, social host liability does not exist in Illinois. Accordingly, the supreme court ruled that a common law cause of action against social hosts does not exist in Illinois.

exists, or has ever existed in Illinois, the court noted that the General Assembly "created a limited statutory cause of action when it enacted the original Dramshop Act of 1872 in response to a great wave of temperance reform that swept the nation." *Id.* at 157.

183. *Id.* at 159-60.
184. *Id.* at 162-63.
185. *Id.* at 164-65.
186. *Id.* at 159.
187. *Id.* at 157. The court declared:

The discussion below demonstrates that it has been, and continues to be, well-established law that Illinois has no common law cause of action for injuries arising out of the sale or gift of alcoholic beverages; that the legislature has preempted the field of alcohol-related liability; and that any change in the law governing alcohol-related liability should be made by the General Assembly, or not at all.

*Id.* at 156.

188. *Id.* at 157. The court declared that it "has spoken with a single voice to the effect that no social host liability exists in Illinois." *Id.* at 156.
189. *Id.* at 158-59.
190. *Id.*
191. *Id.* at 159. The court stated: "As a result, few rules of law are as clear as that no liability for the sale or gift of alcoholic beverages exists in Illinois outside of the Dramshop Act." *Id.* at 158.
Recognizing that courts have continually interpreted the Dramshop Act to preempt all alcohol-related liability, the supreme court refused to change the preemptory interpretation of the Act. The court established that *stare decisis* weighs more heavily on the interpretations of statutes than on the interpretations of the common law. The supreme court explained that if the court changed the past interpretation of the Dramshop Act, then the judiciary would be, in effect, amending the statute. The court noted that the amendment of a statute, which is a legislative process, belongs exclusively to the General Assembly. Additionally, the supreme court supported its reliance on *stare decisis* by reasoning that the General Assembly was aware of the judiciary's preemptory interpretation of the Dramshop Act and never enacted a change to that interpretation. The General Assembly, according to the supreme court, must therefore have acquiesced in this interpretation of the statute.

Moreover, the court reasoned that *stare decisis* was not the only obstacle to changing the law. The court stressed that only the General Assembly could make a change regarding an issue as complicated as social host liability. The court noted that the imposition of social host liability is a major public policy issue, and only the General As-

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192. *Id.* at 159.
193. *Id.* at 159-60. The court referred to its earlier statements in Froud v. Celotex Corp., 456 N.E.2d 131, 137 (Ill. 1983), where it declared: Considerations of *stare decisis* weigh more heavily in the area of statutory construction than in the latter area because such a departure ... amounts to an amendment of the statute itself rather than simply a change in the thinking of the judiciary with respect to common law concepts which are properly under its control.

*Charles II*, 651 N.E.2d at 159-60 (citing Froud v. Celotex Corp., 456 N.E.2d at 137 (Ill. 1983)).
194. *Id.* at 160.
195. *Id.*
196. *Id.* at 159. The court recognized that "it is apparent that the legislature has acquiesced in the court's construction of the statute, which has by now become part of the fabric of the Dramshop Act." *Id.*
197. *Id.*
198. *Id.* at 160.
199. *Id.* The court explained: The primary expression of Illinois public and social policy should emanate from the legislature. This is especially true regarding issues like the present one, where there is disagreement on whether a new rule is warranted. The members of our General Assembly, elected to their offices by the citizenry of this State, are best able to determine whether a change in the law is desirable and workable.

*Id.*
sembly could competently consider the competing interests.\textsuperscript{200} According to the court, these competing factors included the standard of conduct for social hosts, the limitation on liability, and the possible effects on homeowners' and renters' insurance.\textsuperscript{201} Moreover, the court explained, it could not fashion a comprehensive modification in the law because the judiciary can only consider one case at a time.\textsuperscript{202} The judiciary, the supreme court stated, is simply "ill-equipped" to construct a law on a complex issue like social host liability.\textsuperscript{203}

In addition to respecting the role of the General Assembly, the supreme court recognized the importance of the fact that the legislature had attempted, but failed, to enact social host liability for minors.\textsuperscript{204} The court discussed the failed house bills that would have created a remedy against a social host whose minor guests caused injury.\textsuperscript{205} The supreme court added that the General Assembly has worked diligently against drunk driving, enacting stiffer penalties for intoxicated drivers and raising the criminal penalty for serving alcohol to minors.\textsuperscript{206} The legislature, concluded the court, has deliberately deter-

\textsuperscript{200} Id. Adding to its judicial restraint argument, the court explained:

Any decision to expand civil liability to social hosts should be made only after a thorough analysis of the relevant considerations. The General Assembly, by its very nature, has a superior ability to gather and synthesize data pertinent to the issue. It is free to solicit information and advice from the many public and private organizations that may be impacted. Moreover, it is the only entity with the power to weigh and properly balance the many competing societal, economic, and policy considerations involved.

\textsuperscript{201} Id. The Charles \textsuperscript{II} court pointed out that the judicial creation of social host liability would leave social hosts with unlimited liability. Id. at 161. Unlike dramshop liability, which is limited by the Act itself, social host liability could not be limited by a judicial decision. Id. at 160-61. Only the legislature can enact limited liability. Id. at 161.

\textsuperscript{202} Id. at 160.

\textsuperscript{203} Id. The court contrasted its role with that of the legislature. Id. The supreme court stated: "This court, on the other hand, is ill-equipped to fashion a law on this subject that would best serve the people of Illinois. We can consider only one case at a time and are constrained by the facts before us." Id.

\textsuperscript{204} Id. at 162.

\textsuperscript{205} Id. See supra notes 102-04 and accompanying text (listing failed legislative initiatives).

\textsuperscript{206} Charles \textsuperscript{II}, 651 N.E.2d at 162-63. The court stated, "Despite its successes, the General Assembly continues to lead vigorously the fight against underage drunk driving. Its legislation appropriately targets both the adults who provide alcoholic beverages to underage persons and the underage persons themselves." Id. at 162. The court further noted that the General Assembly recently enacted a statute that creates a civil remedy against any person who rents a motel room for the purpose of furnishing alcohol to minors. ILL. COMP. STAT. ANN. ch. 235, § 5/6-21(a) (West 1992). Moreover, the court noted that the General Assembly recently increased the criminal penalty for furnishing alcohol to underage persons. ILL. COMP. STAT. ANN. ch. 235, § 5/6-16 (West 1992 &
mined that social host liability is not the best solution to the drunk driving problem. Accordingly, the supreme court decided that it should not create a rule which the legislature has clearly decided against.

After determining that only the legislature is equipped to fashion a new rule on social host liability, the supreme court responded to three of the dissent’s arguments. First, the court rejected the existence of a national trend in favor of social host liability. The court explained that the existence of a national trend in favor of social host liability is, at best, unclear. In addition, even assuming a national trend did exist, the court stated that its decision should be grounded only in Illinois law.

Second, the court rejected the dissent’s claim that social host liability is required to protect victims of drunk driving accidents, finding no evidence to support such an assertion. Finally, the court rejected the dissent’s claim that the Dramshop Act only preempted alcohol related liability for injuries caused by intoxicated guests. The court emphasized that it has interpreted the Dramshop Act to preempt the common law development of all alcohol related liability.

207. Charles II, 651 N.E.2d at 163.
208. Id. at 164. The court explained that “[j]udicial action in the face of these legislative decisions would be ill-advised.” Id.
209. Id. at 161, 163-64.
210. Id. at 161. The Charles II court demonstrated that, contrary to the dissent’s wish to allow any injured party to recover against a social host, some states permit only third parties to recover against social hosts. Id. Also, the court noted that a number of state legislatures, rather than state courts, enacted social host liability. Id. See also supra notes 92-94 and accompanying text (noting four states whose legislatures have enacted social host liability).
211. Charles II, 651 N.E.2d at 161. The court stated, “The dissent agrees with the plaintiffs, claiming that 26 states have adopted the view which it endorses. An analysis of the law of other jurisdictions reveals otherwise.” Id.
212. Id. The court noted that it was “of the view that its decision should be grounded upon the law of Illinois rather than upon contradictory trends elsewhere.” Id.
213. Id. at 164. The court stated:
The dissent’s statements do not withstand scrutiny. The victims of underage drunk driving have always had, and will continue to have, a civil remedy. They can sue the drunk driver, who is undoubtedly at fault. We have not been presented with any evidence to suggest that this civil remedy is insufficient.
214. Id.
215. Id. at 164.
2. The Dissent

In her dissenting opinion, Justice McMorrow argued that the supreme court should allow a remedy against social hosts whose intoxicated minor guests caused injuries. Dismissing the majority's holding that the Dramshop Act preempted common law social host liability, Justice McMorrow argued that the traditional interpretation against social host liability should be changed. She added that stare decisis should not preclude a change in the law, especially in light of drunk driving tragedies and a persuasive national trend in favor of creating a remedy against social hosts.

Justice McMorrow first dismissed the traditional Cunningham interpretation that the Dramshop Act preempts alcohol-related liability. Adopting the reasoning of the appellate court in Cravens, she argued that the Dramshop Act does not expressly or impliedly preempt the common law liability of alcohol. She emphasized that it was not logical to construe the Dramshop Act to preempt social host liability when the statute does not speak to that issue.

Dismissing the preemption argument, Justice McMorrow then argued for the modification of the traditional common law rule against social host liability. She noted that the common law rule was antiquated and that the tragic consequences of underage drunk driving required a reconsideration of the traditional common law rule. Justice McMorrow explained that the Cruse decision did not consider the differences between a minor and an adult. She stated that minors are

216. Justice Harrison joined in the dissent. Id. at 165 (McMorrow, J., dissenting).
217. Id. at 164 (McMorrow, J., dissenting).
218. Id. at 167 (McMorrow, J., dissenting).
219. Id. at 170 (McMorrow, J., dissenting).
220. Id. at 167 (McMorrow, J., dissenting). Justice McMorrow argued that "the Dramshop Act, in neither its express terms nor its underlying intent and purpose, makes any reference to and in no way precludes social host liability for the provision of alcohol to a minor." Id. (McMorrow, J., dissenting).
222. Charles II, 651 N.E.2d at 167 (McMorrow, J., dissenting). She argued that "[i]t is illogical to construe a statute so that it says something about a topic on which the statute is clearly silent." Id. (McMorrow, J., dissenting).
223. Id. at 167-68 (McMorrow, J., dissenting). Once Justice McMorrow had concluded that the Dramshop Act did not preempt the development of alcohol related liability, she could consider the validity of the common law rule.
224. Id. (McMorrow, J., dissenting). Justice McMorrow noted that the common law must be reconsidered "in light of the present day reality of the needless carnage and destruction wrought by underage drunk driving." Id. at 168 (McMorrow, J., dissenting).
225. Id. at 167 (McMorrow, J., dissenting).
not the able-bodied adults discussed by the *Cruse* court, but, rather, they are children who are unable to make educated decisions about alcohol consumption. Therefore, she reasoned, those who furnish alcohol to minors can be liable for injuries caused by the intoxicated minors.

Supporting her argument for a modification of the common law, Justice McMorrow emphasized that *stare decisis* did not preclude a modification in the traditional rule against social host liability. She stressed that the law is not static. On the contrary, she stated, the law should change in accordance with the demands of society. Justice McMorrow explained that the judiciary has the duty to change the common law as the demands of society change. Moreover, Justice McMorrow argued that a state of inaction exists between the judiciary and the legislature because both branches have been waiting for the other to enact social host liability. As a consequence of this inaction, she argued, the court has the duty to change the law.

Justice McMorrow noted that other policy considerations dictated a change in the law. First, she observed that many other state courts have not hesitated to create a remedy against social hosts. She

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226. *Id.* at 168 (McMorrow, J., dissenting). Justice McMorrow stated: "[C]hildren as a class are simply incompetent by reason of their youth and inexperience to deal responsibly with the effects of alcohol." *Id.* (McMorrow, J., dissenting) (citing Ely v. Murphy, 540 A.2d 54, 57 (Conn. 1988)). *See supra* notes 124-25 and accompanying text (discussing minors' inability to consume alcohol responsibly).


228. *Id.* at 168-69 (McMorrow, J., dissenting).

229. *Id.* at 169 (McMorrow, J., dissenting).

230. *Id.* (McMorrow, J., dissenting). Justice McMorrow argued that "this court's view of *stare decisis* has never been used, as the majority does in the present cause, as an excuse for judicial inaction that amounts to an abandonment of this court's duty to guide and develop the common law of this State." *Id.* at 168-69. (McMorrow, J., dissenting).

231. *Id.* at 168 (McMorrow, J., dissenting).

232. *Id.* (McMorrow, J., dissenting). Justice McMorrow explained:

We believe that the proper relationship between the legislature and the court is one of cooperation and assistance in examining and changing the common law to conform with the ever changing demands of the community. There are, however, times when there exists a mutual state of inaction in which the court awaits action by the legislature and the legislature awaits guidance from the court. Such a stalemate is a manifest injustice to the public. When such a stalemate exists and the legislature has, for whatever reason, failed to act to remedy a gap in the common law that results in injustice, it is the imperative duty of the court to repair that injustice . . . .

*Id.* at 169. (McMorrow, J., dissenting) (citing Alvis v. Ribar, 421 N.E.2d 886, 896 (Ill. 1981)).

233. *Id.* (McMorrow, J., dissenting).

234. *Id.* at 170. (McMorrow, J., dissenting).

235. *Id.* (McMorrow, J., dissenting).
found that over twenty-six states have adopted social host liability for minors. Justice McMorrow argued, reflects the contemporary understanding that adults who serve alcohol to minors must be responsible for the injuries caused by those minors. Justice McMorrow added that the injuries caused by those minors came with tragic consequences. She noted that these consequences suggest that social host liability is required to provide plaintiffs with a remedy. In conclusion, Justice McMorrow argued that social host liability was necessary to deter adults from serving alcohol to minors.

IV. ANALYSIS

The Illinois Supreme Court correctly ruled that under the current state of Illinois law, social hosts cannot be held liable for injuries caused by their minor guests. First, the supreme court properly applied well established precedent to the issue of social host liability. Moreover, the supreme court’s decision reflects the proper roles of the judiciary and the General Assembly under the Illinois Constitution. Despite the correctness of the decision, however, the reasoning of the court should be narrowly construed.

A. The Supreme Court’s Reasoning

1. The Importance of Precedent

In Charles II, the Illinois Supreme Court correctly applied precedent when it determined that social host liability does not exist. In the

236. Id. (McMorrow, J., dissenting). Justice McMorrow added an appendix listing the 26 states that have created a remedy against social hosts. Id. at 173-74. (McMorrow, J., dissenting). Justice McMorrow claimed that the states of Alabama, Arizona, Colorado, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Vermont, Washington, and Wisconsin have adopted social host liability. Id. (McMorrow, J., dissenting).

237. Id. at 166-68 (McMorrow, J., dissenting).

238. Id. at 171-72 (McMorrow, J., dissenting).

239. Id. at 172-73 (McMorrow, J., dissenting).

240. Id. at 173 (McMorrow, J., dissenting). Justice McMorrow noted that, until the legislature acts, “adults who host parties where minors are allowed to become inebriated and then drive a vehicle will have less incentive to change their ways.” Id. (McMorrow, J., dissenting).

241. See infra part IV.A.

242. See infra notes 245-74 and accompanying text.

243. See infra notes 275-304 and accompanying text.

244. See infra notes 305-14 and accompanying text.

245. See supra notes 61-70 (discussing the historic Illinois rule against social host liability).
Cunningham decision, the supreme court held that the Dramshop Act preempted all alcohol related liability. Since the Cunningham decision, courts have consistently adhered to this interpretation of the Dramshop Act. Illinois appellate courts have not only held that the Dramshop Act preempts civil liability for commercial sellers of alcohol; courts have also held that the Dramshop Act preempts all alcohol related liability in Illinois. Therefore, the preemptory effect of the Dramshop Act dictates that civil liability cannot exist by virtue of either a general negligence theory or a common law violation of statute.

2. The Importance of Stare Decisis

Although the Charles II court had the power to change the preemptory effect of the Dramshop Act, the supreme court correctly invoked stare decisis in light of the historical precedence of rejecting social host liability in Illinois. Generally, stare decisis reflects the philosophy that judges are not policymakers but, rather, are interpreters of the law. For instance, many Illinois courts have cited the tragic consequences of social hosts who serve alcohol to minors. While this concern has clearly tempted those courts to modify the common law

247. See supra part II.B.
248. See supra part II.B.
249. Charles II, 651 N.E.2d at 159.
250. Illinois judges are elected, not appointed. ILL. CONST. of 1970, art. VI, § 12(a). However, this does not alter this analysis because they are not elected as legislators, but, rather, as interpreters of the law.
251. See generally Vasquez v. Hillery, 474 U.S. 254, 265 (1986) (stare decisis guarantees that the law is founded in principles and not the "proclivities of individuals"); Burnet v. Coronado Oil & Gas, Co., 285 U.S. 393, 405 (1931) (Brandeis, J., dissenting) (claiming that it is better that "the law be settled than that it be settled right"); Justice William O. Douglas, Stare Decisis, 49 COLUM. L. REV. 735, 736 (1949) (claiming that there will be no equal justice under the law if negligence principles are applied "in the morning but not in the afternoon"); Lawrence C. Marshall, "Let Congress Do It": The Case for an Absolute Rule of Statutory Stare Decisis, 88 MICH. L. REV. 177, 201 (1989) (noting that the court's role as the adjudicator prevents it from changing the law); Justice Lewis F. Powell, Jr., Stare Decisis and Judicial Restraint, 47 WASH. & LEE L. REV. 281, 286 (1990) (noting that stare decisis preserves the integrity of the court). Justice Powell declared that the legitimacy of the court, its integrity in the eyes of the public and other branches of government, exists because the court is not comprised of judges that write their own public policy into law. See id. at 286-87.

Both Justice Douglas and Justice Brandeis have agreed, however, that stare decisis may not be as important when the interpretation of the Constitution is at issue, primarily because constitutional interpretations are extremely difficult to change through the legislative process. See Burnet, 285 U.S. at 405 (Brandeis, J., dissenting); Douglas, supra, at 736-37.
rule against social host liability, most Illinois courts have refused to revise the law, preferring instead that elected representatives make any changes.\textsuperscript{253} In addition to protecting the law from the preferences of individual judges, \textit{stare decisis} also ensures continuity in the law.\textsuperscript{254} If, for example, the Illinois Supreme Court decided to modify the rule against social host liability, thousands of Illinois residents who serve alcohol to minors at innocuous social gatherings could suddenly be exposed to massive financial liability.\textsuperscript{255} Illinois citizens cannot make informed decisions from nebulous law.\textsuperscript{256} Yet, by changing the rule against so-

\textsuperscript{253} See generally Estate of Ritchie, 572 N.E.2d at 369-70 (stating that although the loss of life and property warrants a re-examination of the law, elected representatives should make the change); Puckett v. Mr. Lucky’s Ltd., 529 N.E.2d 1169, 1170 (Ill. App. 4th Dist. 1988). In \textit{Puckett}, the court conceded that the plaintiff's claim against a social host had validity. \textit{Puckett}, 529 N.E.2d at 1170. Nevertheless, the court, recognizing the precedent against the plaintiff's argument, dismissed the plaintiff's claim and declared that any change in the law should come from elected representatives. \textit{Id.}

\textsuperscript{254} See Powell, supra note 251, at 286. Justice Powell declares that \textit{stare decisis} is vital to stability in the law. \textit{Id.} He writes: “Even in the area of personal rights, \textit{stare decisis} is necessary to have a predictable set of rules on which citizens may rely in shaping their behavior.” \textit{Id.}

\textsuperscript{255} See Sparlin, supra note 1, at 617. In her dissent, Justice McMorrow claimed that the \textit{Charles II} Court's refusal to change the law permits adults to serve alcohol to minors. \textit{Charles II}, 651 N.E.2d at 165 (McMorrow, J., dissenting). Yet courts have denied that their refusal to create social host liability should be taken as implied approval of serving alcohol to minors. See, e.g., Zamiar v. Linderman, 478 N.E.2d 534, 535 (Ill. App. 1st Dist. 1985). In \textit{Zamiar}, the plaintiff claimed that the court would be giving its blessing to adults who serve alcohol to minors if the court failed to establish a cause of action against social hosts. \textit{Id.} The court stated: “While we do not wish to be so understood, we must nonetheless decline plaintiff's invitation to conjure a common law cause of action.” \textit{Id.}

In addition, serving alcohol to minors continues to be a crime. See \textit{ILL. COMP. STAT. ANN. ch. 235, § 5/6-16(a) (West Supp. 1995) (amended by Pub. Act. No. 89-250, § 5, 1995 Ill. Legis. Serv. 3009 (West)) (providing for criminal penalties for serving alcohol to a minor)}; \textit{ILL. COMP. STAT. ANN. ch. 235, § 5/6-16(c) (providing for criminal penalties for serving alcohol to a minor at a social gathering)}.

\textsuperscript{256} See Powell, supra note 251, at 286 (perhaps the most important and familiar argument for \textit{stare decisis} is one of the legitimacy of the judiciary). See also Douglas, supra note 251, at 735-36 (noting that \textit{stare decisis} provides “moorings” for the decisions of people in their daily affairs). Arguably, social hosts of all sorts could be completely risk adverse, avoiding any possible opportunity for a minor to receive alcohol. How risk adverse would a social host have to be, though? The \textit{Charles II} court stated:

\textit{Accidents following a wedding, for example, would include the typical targets of the bride, the groom, the servers, and anyone else who may have handed the underage person a drink. Courts and jurors would then be faced with evaluating the social host's conduct. For example: Did the social host do enough to stop the underage drinker from his or her own illegal actions? Did the host check identification to determine the guests' ages? Should the host have allowed underage persons to be present? Could the host have done more to prevent a guest's departure?}
cial host liability, the court would place the law in a state of flux. The court would require years to settle the numerous questions presented by the implementation of social host liability. Stare decisis prevents this legal confusion and provides the consistency in the law that citizens need to formulate basic decisions about providing alcohol at social gatherings.

Stare decisis also limits the power of a court to modify an original interpretation of a statute, such as the Dramshop Act, and guarantees that the legislature will not become irresponsible and unaccountable to the electorate. For example, if the General Assembly believes that the judiciary will reinterpret statutes to reflect changing times, then it may simply leave the work of statutory revision to the judiciary. This would allow the legislature to avoid its responsibil-

Charles II, 651 N.E.2d at 164.

257. See Michael J. Dittoe, Statutory Revision by Common Law Courts and The Nature of Legislative Decision Making—A Response to Professor Calabresi, 28 St. Louis U. L.J. 235, 235-37 (1984). Dittoe notes that “while a legislature can propose, consider, and pass such a rule sua sponte,” courts require wronged litigants who appear over a long stretch of time in order to formulate the law fully. Id. at 255. As a result, questions in the law may take years to answer through the judicial system. In the case of social host liability, for instance, would a social host be liable only to a third party? At what age would a minor be considered an able bodied adult? Would the social host merely have to know of alcohol being served, or would the social host be required to actually physically serve the minor? Most importantly, what kind of financial limits would be placed on the liability of social hosts? A cap on recovery is an issue that would have to be solved by the legislature. For more of these questions, see the majority opinion in Charles II, 651 N.E.2d at 160.

258. See supra note 257 and accompanying text for some of the unanswered questions.

259. See supra note 251 and accompanying text.

260. See generally Froud v. Celotex Corp, 456 N.E.2d 131, 137 (Ill. 1983) (stating that considerations of stare decisis weigh more heavily in the area of statutory construction); Union Elec. Co. v. Illinois Commerce Comm’n, 396 N.E.2d 510, 517 (Ill. 1979) (noting that previous decisions of the court demonstrate that the statute has been consistently construed); William N. Eskridge, Dynamic Statutory Interpretation 253 (1994) (acknowledging that erroneous statutory precedents can be changed by the legislature); Frank E. Horack, Congressional Silence: A Tool of Judicial Supremacy, 25 Tex. L. Rev. 205, 249 (1949) (recognizing that a supreme court’s initial interpretation of a statute becomes part of statute); Edward H. Levi, Introduction to Legal Reasoning, 15 U. Chi. L. Rev. 501, 523 (1948) (arguing that stare decisis should be dispositive on the interpretation of a general statute); Powell, supra note 251, at 287 (noting that stare decisis should be used with “a special vigor” in statutory cases because Congress has the power to change any flawed judicial interpretation).

261. See Levi, supra note 260, at 523; Marshall, supra note 251, at 208. Marshall writes: “By pointing to the possibility that the courts will revisit the issue, or by otherwise suggesting that the issue is best dealt with by the judiciary, a legislator can avoid the political heat that sponsoring or voting for legislation to overrule the decision may spark.” Id. at 211.

262. See supra note 261 and accompanying text.
ity to formulate public policy because the legislature could avoid controversy by deferring to the judiciary.

By refusing to change the rule against social host liability, however, the supreme court clearly demonstrated that only the General Assembly should change the law. The Charles II decision appropriately forces the legislature to take a stand on this controversial issue. If the General Assembly does not modify the supreme court's decision, then it clearly acquiesces in the court's holding. On the other hand, any legislative modification of the Charles II decision signifies that Illinois' legislators are interested in expanding the remedies for injured plaintiffs. Thus, the electorate is able to hold a branch of government accountable for the legal status of social host liability.

263. See Levi, supra note 260, at 523. Levi notes that if the controversy is great, and the court is expected to reinterpret legislation, then "it is not to be expected . . . that the legislature will ever act." Id. 264. See Marshall, supra note 251, at 211-12. See also Levi, supra note 260, at 523 (recognizing that controversial changes in the law should be made by the legislature). 265. Charles II, 651 N.E.2d at 160-61. See also Marshall, supra note 251, at 213-14. Marshall noted the problem that results when it is not clear which branch has responsibility to change an interpretation of law. Id. at 213. He concluded: "The flaw, then, in the current system of shared authority to overrule statutory precedents is that no one body is given the ultimate job of reviewing interpretations of statutes and deciding whether they represent currently acceptable renditions of the statute's goals, or for that matter, whether the statute is worth keeping around at all. This diffusion of authority lessens the probability of statutory development." Id. at 215. 266. See supra notes 245-48 and accompanying text. 267. Courts will almost always infer legislative acquiescence of a judicial interpretation if the legislature does not act to correct the court's interpretation. See, e.g., Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477, 485-87 (1989) (Stevens, J., dissenting) (recognizing that congressional silence is indicative of acquiescence in the Court's interpretation of a statute); Apex Hosiery Co. v. Leader, 310 U.S. 469, 488 (1940) (noting that congressional failure to amend a judicial interpretation presumes legislative acquiescence); Union Elec. Co. v. Illinois Commerce Comm'n, 396 N.E.2d 510, 517-18 (Ill. 1979) (declaring that legislative acquiescence is to be presumed when the legislature does not amend a judicial interpretation but does make other changes to a comprehensive act). But see Martin H. Redish, Abstention, Separation of Powers, and the Limits of the Judicial Function, 94 YALE L.J. 71, 82 (1984) (arguing that "it is improper to transform a congressional failure to legislate into the equivalent of legislation"). See also supra note 196 and accompanying text (quoting Charles II, 651 N.E.2d at 159, for the proposition that legislative acquiescence in judicial interpretation of a statute allows for that interpretation to become part of the act). 268. See REED DICKERSON, THE INTERPRETATION OF STATUTES 252 (1975). See also COLO. REV. STAT. ANN. § 12-47-128.5 (West 1990) (modifying the traditional rule against imposing liability on social hosts). See supra notes 93-95 and accompanying text (discussing the Colorado legislature's change to the traditional common law rule). 269. See Levi, supra note 260, at 523. Levi notes that the mechanism for holding a legislator accountable, regular elections, is easier for the electorate than the mechanism
Not only does statutory *stare decisis* force the legislature to be accountable, but it prevents the judiciary from amending the original meaning of statutes. In *Cunningham*, the supreme court first interpreted the Dramshop Act's effect on other alcohol related remedies when it held that the Dramshop Act preempted all common law liability for alcohol. This interpretation reflected legislative intent. Therefore, if the *Charles II* court had changed this preemptory interpretation, then the supreme court would be effectively amending the Dramshop Act. The power to amend statutes belongs only to the General Assembly.

3. The Commitment to the Separation of Powers

In accordance with the Illinois Constitution, the *Charles II* court correctly acknowledged that the power to amend statutes resides in the legislature. The Illinois Constitution explicitly declares that no branch of government may exercise the power of any other branch. The judiciary only has the power to interpret the laws of the legislature; it does not have the power to amend laws and thus determine the public policy of the state. By refusing to change its interpretation of the

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270. See *Dickerson*, supra note 268, at 253. Dickerson writes:
If it [the court] interprets the statute correctly, fine. If it interprets the statute incorrectly, the court must live with its mistake until the legislature corrects it. . . . Because only a legislature can amend a statute, only a legislature can correct such a judicial error. Accordingly, for the court to correct its mistake would usurp the legislature's function.

Id. See also *Horack*, supra note 260, at 251-52 (arguing that, once a court has interpreted a statute, only a legislature can change the interpretation); *Levi*, supra note 260, at 523 (noting that changes to statutes can only be made by the legislature).


272. *Id. See supra* note 57 and accompanying text.

273. *See Horack*, supra note 260, at 248-49 (stating that the judiciary cannot amend a statute); *Levi*, supra note 260, at 523 (recognizing that the judiciary exceeds its designated role when it amends statutes).

274. *See infra* notes 275-304 and accompanying text.


276. *Id.* ("The legislative, executive, and judicial branches are separate. No branch shall exercise powers properly belonging to the other."). Clearly, then, the judiciary cannot exercise the legislative function without exceeding its constitutional role.

277. See generally *Dickerson*, supra note 268, at 253 (recognizing the legislature's role as that of chief policymaker for society); David A. Farber, *Statutory Interpretation and Legislative Supremacy*, 78 GEO L.J. 281, 283 (1989) (explaining that the legislature is the supreme policy maker in a state); *The Federalist* No. 78 (Alexander Hamilton) (arguing that the "interpretation of the laws is the proper and peculiar province of the courts"). Hamilton also noted that "courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally
Dramshop Act, the Charles II court avoided usurping the constitutional role of the General Assembly. Therefore, the court’s decision preserves the separation of powers declared in the Illinois Constitution, the ultimate embodiment of law.

Additionally, in its refusal to usurp the constitutional role of the General Assembly, the Charles II decision reaffirms the legislature’s superior ability to formulate clear, comprehensive laws regarding complex issues. For instance, if social host liability existed in Illinois, common prudence would demand that all potential social hosts carry some kind of liability insurance. The high cost of this insurance could prevent many innocuous social gatherings. Even if a social host did acquire insurance, social hosts may not have the experience to recognize drunk minor guests. While taverns and commercial sellers regularly deal with intoxicated customers, social hosts might be unable to prevent an intoxicated minor guest from driving. Moreover, social hosts, unlike commercial vendors, do not have employees who can control intoxicated guests. These issues illustrate the complexity of formulating any law relating to social host liability. As the designated policymaking branch of government, the General Assembly can more competently balance these highly controversial issues surrounding social host liability in Illinois.

be the substitution of their pleasure to that of the legislative body.” Id.; Horack, supra note 260, at 250 (claiming that it is understood in a democratic society that the legislature determines public policy).

278. Horack, supra note 260, at 249 (noting that the court usurps the legislature’s role when the court engages in policy making).

279. See supra note 276 and accompanying text.

280. THE FEDERALIST No. 78 (Alexander Hamilton) (arguing that the Constitution is superior to the will of the legislature and must guide the decisions of the judiciary).

281. See Marshall, supra note 251, at 201. Marshall writes: “If separation of powers means anything, it means that the task of creating law falls upon the legislature, and the courts must obey and enforce the constitutionally legitimate enactments of the legislative branch. It is the legislative branch which...is answerable to the people...” Id. See also DICKERSON, supra note 268, at 253 (claiming that any judicial change in the interpretation of a statute usurps the legislature’s constitutional role).

282. Sparlin, supra note 1, at 620.

283. Id.

284. Id. at 619.

285. Id.

286. Id.

287. The Illinois Supreme Court is hardly the only court to recognize the important role that the legislature has to play on the issue of social host liability. See Bankston v. Brennan, 507 So. 2d 1385, 1387 (Fla. 1987) (acknowledging that the court had the power to change the rule but that the legislature is better equipped to change a law that has such “broad ramifications”); Harriman v. Smith, 697 S.W.2d 219, 222 (Mo. Ct. App. 1985) (recognizing that the Missouri Constitution has designed the legislature as
In addition to its superior ability to formulate policy on the issue of social host liability, the General Assembly can enact a comprehensive rule without relying on litigation. If, for example, the judiciary created social host liability, Illinois law would be in a state of flux for years because the supreme court would be required to resolve issues on a case by case basis, a process that would assuredly lead to confusion. This confusion would provide Illinois citizens with little guidance on issues that could involve huge risks. Recognizing the natural inability of the judiciary to formulate laws which address complicated issues, the Charles II decision protects the General Assembly's role as Illinois' chief policymaker. More importantly, this deference

the branch of government to make decisions of such "widespread repercussions"); Williamson v. Old Brogue, Inc., 350 S.E.2d 621, 623-24 (Va. 1986) (establishing that the legislature must make any changes to the traditional rule against social host liability). Declaring that the judiciary should not abrogate the common law rule against social host liability, the Williamson court declared:

A legislative change in the law is initiated by introduction of a bill which serves as public notice to all concerned. The legislature serves as a forum for witnesses representing interests directly affected by the decision. The issue is tried and tested in the crucible of public debate. The decision reached by the chosen representatives of the people reflects the will of the body politic. And when the decision is likely to disrupt the historic balance of competing values, this effective date can be postponed to give the public time to make necessary adjustments.

Williamson, 350 S.E.2d at 624 (quoting Bruce Farms v. Coupe, 247 S.E.2d 400, 404 (Va. 1978)).

288. Social host liability raises a number of questions that are certainly for the legislature to decide. See, e.g., Bankston v. Brennan, 507 So. 2d 1385, 1387 (Fla. 1987). See supra note 256 and accompanying text for a list of the many issues that surround social host liability.

289. See Dittoe, supra note 257, at 236-37. See supra notes 199-203 and accompanying text.

290. See generally Dittoe, supra note 257, at 254-55 (stating that the court, as adjudicator, can only hear one case at time).

291. See Charles II, 651 N.E.2d at 160-61 (noting that the unresolved points of law would force Illinois litigants to crowd the courts in search for answers).

292. See Douglas, supra note 251, at 735-36. Justice Douglas notes the importance of a clear law to people who must make daily decisions. Id. Justice Douglas states that stare decisis "provides some moorings so that men may trade and arrange their affairs with confidence." Id. at 736.

293. See supra note 277 and accompanying text; Farber, supra note 277, at 283 (recognizing that the legislature is the supreme policymaker of the state). Even where the supreme court has fashioned a complicated law, the court has called for legislative assistance. See, e.g., In re Longeway, 549 N.E.2d 292, 301 (Ill. 1989). In Longeway, the Illinois Supreme Court held that an individual has the right to refuse life sustaining medical treatment. Id. at 298. Although the court judicially created this right, the court reasoned that the legislature was the "appropriate forum" to make new laws and, accordingly, appealed to the legislature to fashion a policy on the so-called "right to die." Id. at 301.
to the General Assembly provides Illinois citizens with clear, comprehensive laws. 294

In contrast to the majority opinion, the dissent’s approach disregards the proper role of the legislature. 295 Justice McMorrow argued for the alteration of the long standing preemptory effect of the Dramshop Act. 296 Justice McMorrow’s opinion depended on the existence of a civil remedy under section 6-16 of the Liquor Control Act, 297 and hinged on the ability of the court to change the traditional common law rule against social host liability for injuries caused by guests. 298 In doing so, her dissent erroneously assumes that the court can reinterpret a statute. 299

See also Alvis v. Ribar, 421 N.E.2d 886, 897 (Ill. 1981). In Alvis, the Illinois Supreme Court adopted the policy of comparative negligence, discarding the long-standing Illinois rule of contributory negligence. Id. at 896-97. The court noted that judicial restraint did not prevent judicial modification of a law when, like contributory negligence, the law was originally of judicial creation. Id. at 898.

294. See Douglas, supra note 251, at 735-36.

295. See infra notes 296-304 and accompanying text.

296. See supra notes 220-227 and accompanying text. In essence, Justice McMorrow viewed the interpretation of the legislature’s intent in creating the Dramshop Act differently than the majority. Charles II, 651 N.E.2d at 167 (McMorrow, J., dissenting). In Charles II, she claimed the Act only preempted the commercial liability of alcohol because the Act does not speak to social host liability. Id. (McMorrow, J., dissenting). Yet, her argument fails to recognize that Illinois courts have long interpreted the Dramshop Act as preempting all alcohol related liability. See supra note 66 and accompanying text.

297. Charles II, 651 N.E.2d at 164 (McMorrow, J., dissenting). Justice McMorrow incorporated her opinion in Cravens v. Inman, 586 N.E.2d 367 (Ill. App. 1st Dist. 1991), into her Charles II opinion. Id. at 166 (McMorrow, J., dissenting). In Charles II, the social hosts’ violations of the Liquor Control Act were vital to her analysis, as the plaintiff’s second count claimed that the social hosts violated § 6-16 of that statute. Id. at 156. See also Hansen v. Friend, 824 P.2d 483, 485 (Wash. 1992) (finding a civil remedy based on the violation of a liquor statute). See supra notes 78-84 and accompanying text (explaining that some state courts have concluded that when a violation of a liquor act occurs, the plaintiff should be able to recover for civil liability against a social host).

298. Charles II, 651 N.E.2d at 166-67 (McMorrow, J., dissenting). Under Justice McMorrow’s approach a social host could be held civilly liable under § 6-16(c) only if the statutory violations could have proximately caused the injuries to the plaintiff. See supra note 47 and accompanying text (discussing the proximate cause requirement of violation of statute). Thus, Justice McMorrow had to modify the traditional rule, which declared that furnishing alcohol could never be the proximate cause of any alcohol-related injuries. Charles II, 651 N.E.2d at 167 (McMorrow, J., dissenting). See also Hart v. Ivey, 420 S.E.2d 174, 178 (N.C. 1992) (announcing that the furnishing of alcohol can proximately cause alcohol related injuries). See supra notes 86-91 and accompanying text (discussing Hart).

299. See Horack, supra note 260, at 251 (recognizing that the separation of powers forbids the court to change even an incorrect interpretation of a statute).

Justifying her modification of the traditional rule, Justice McMorrow argued that a
While some scholars argue that the court can exceed its designated role if the legislature is too busy to enact a change in a judicial interpretation of a statute,\textsuperscript{300} in the case of social host liability and alcohol related liability, the Illinois General Assembly has never been "too busy" to consider the enactment of a civil remedy.\textsuperscript{301} The legislature has often considered the issue of social host liability and consistently rejected enacting such a law.\textsuperscript{302} Additionally, since the Liquor Control Act's original passage, the legislature has made changes that directly affect minors, none of which include a remedy against social hosts.\textsuperscript{303} Clearly, the General Assembly has deliberately chosen not to impose civil liability on social hosts whose minor guests cause injuries.\textsuperscript{304}

\textsuperscript{300} See, e.g., C. Paul Rogers III, \textit{Judicial Reinterpretation of Statutes: The Example of Baseball and the Antitrust Laws}, 14 \textit{Hous. L. Rev.} 611, 611-12 (1977). Rogers criticizes statutory \textit{stare decisis} because he believes that the policy makes an incorrect assumption. \textit{Id.} He writes: "[T]he reasoning presupposes that legislatures are responsive to judicial edicts. In many instances, this may not be an accurate presupposition. Legislatures are usually extremely busy while in session." \textit{Id.}

\textsuperscript{301} See \textit{supra} notes 102-04 and accompanying text for a list of failed bills. Members of the General Assembly more actively regulate the consumption of alcohol than any other area. For a complete look at the General Assembly's active role in liquor regulation, see the cumulative index of the \textit{ILLINOIS LEGISLATIVE SYNOPSIS AND DIGEST} 2522-24 (1992).

\textsuperscript{302} See \textit{supra} notes 102-06 discussing certain unsuccessful, repeated attempts to enact social host liability.

\textsuperscript{303} For instance, the General Assembly enacted a civil remedy against any person that rents a motel room for a minor with the express purpose of furnishing alcohol to the minor. Pub. Act No. 84-1380, 1986 Ill. Laws 3139 (codified at ILL. COMP. STAT. ANN. ch. 235, § 5/6-21(a) (West 1992)). The legislature has also raised the criminal penalty for serving alcohol to a minor. Pub. Act No. 88-613 (codified at ILL. COMP. STAT. ANN. ch. 235, § 5/6-16 (West 1992)).

\textsuperscript{304} See \textit{supra} notes 102-106 and accompanying text.
B. The Scope of the Supreme Court’s Decision

Although the supreme court correctly deferred to the General Assembly, the Charles II decision should not be construed too broadly. According to Justice McMorrow, the Charles II court abandons the court’s obligation to develop the common law of Illinois. In fact, the Charles II decision does not relinquish to the General Assembly the supreme court’s control over the development of the common law. Rather, the supreme court preserved its traditional obligation to guide the development of the common law. The Charles II court refused to reconsider social host liability only because the Dramshop Act preempted the common law development of alcohol related liability. Thus, the supreme court can still reconsider common law rules where the legislature has not preempted judicial development of the common law.

Just as the Charles II decision does not relinquish the judiciary’s ability to create new common law rules, neither does it abrogate the long-standing common law rule that a person may be civilly liable in negligence for the violation of a statute. In many cases, a court will consider a claim based on the violation of a statute, and in such cases, the violation of a statute will invariably continue to constitute prima

305. See Williamson v. Old Brogue, Inc., 350 S.E.2d 621, 622-24 (Va. 1986). The Virginia Supreme Court declared that the legislature should make any change to the traditional common law against social host liability because the court was “ill-suited” to make such a change. Id. Nevertheless, the court reserved its traditional right to change the common law. Id. The court declared that Virginia courts operate under the common law, unless the state’s legislature alters the basis for a decision. Id.


307. Farber, supra note 277, at 283. Farber points out that statutory stare decisis does not eliminate the court’s ability to develop the common law, despite the legislature’s right to abrogate any judicial rule. Id.

308. See, e.g., In re Longeway, 549 N.E.2d 292, 297 (Ill. 1989) (determining that it had the power to create a right to rescind medical treatment because the legislature had not yet entered that particular field). Id. See also Ely v. Murphy, 540 A.2d 54, 57-58 (Conn. 1988) (declaring that the judiciary will always have the power to modify the common law, unless the legislature has interfered); Alvis v. Ribar, 421 N.E.2d 886, 896 (Ill. 1981) (holding that stare decisis will not prevent the court from changing judicially created doctrines and the common law).

309. The Charles II court never held that it was powerless to change the preemptory interpretation of the Dramshop Act. Charles II, 651 N.E.2d at 160. The court refused to change the law only because the legislature has played such an active role in alcohol related liability and is best able to resolve such issues comprehensively. Id.

310. See supra note 308 and accompanying text.

311. See infra notes 312-13 (discussing the reason for the continuing validity of the violation of statute doctrine).


facie evidence of negligence. In Charles II, however, the court correctly declined to create a civil remedy for the violation of the Liquor Control Act, as it is a comprehensive scheme that regulates virtually all uses of alcohol and the varied punishments of misuses. Consequently, the Dramshop Act preempts all alcohol related liability.

V. IMPACT

The Illinois General Assembly will undoubtedly acquiesce in the Charles II decision. In the past, the legislature has explicitly rejected any attempt to enact social host liability. Moreover, a more conservative General Assembly recently acted to limit a plaintiff's ability to recover for personal injuries. The Premises Liability Act was among the many Illinois laws that was modified to limit liability. This movement against liability certainly illustrates that the General Assembly will not amend the Liquor Control Act to include social host liability.

Because the legislature will acquiesce, those injured in drunk driving accidents will only be able to recover from the drunk drivers themselves. Yet, contrary to the suggestions of Justice McMorrow, this limitation on potential defendants will not significantly affect the recoveries of plaintiffs. While commercial sellers of alcohol invariably have insurance to cover any substantial liability under the Dramshop Act, social hosts do not have insurance to cover the liability

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312. See supra note 47 and accompanying text.
315. See supra notes 102-04 and accompanying text.
316. On March 9, 1995, Governor Edgar signed a bill, effective immediately, that provided a massive reform of civil liability in Illinois. Pub. Act No. 89-7, § 15, 1995 Ill. Leg. Serv. 224 (West) (codified in scattered sections at ILL. COMP. STAT. ANN chs. 430, 730, 735, 740, 745, 815, 820). The law makes major changes in products liability and repeals joint liability. Id. See also Abdon M. Pallasch, To Cap or Not to Cap: The Tort Battle of '95, CHI. LAW., March 1995, at 1 (recognizing the newly elected conservative General Assembly that is committed to passing caps on the amount a plaintiff can recover in a personal injury suit).
317. ILL. COMP. STAT. ANN. ch. 740, § 130/2 (West Supp. 1996) (amending ILL. COMP. STAT. ANN. ch. 740, § 130/1 (West 1992)).
318. See supra note 316 (discussing the General Assembly's efforts to curb civil liability).
319. Charles II, 651 N.E.2d at 172-73 (McMorrow, J., dissenting) (noting the great injustice to plaintiffs because they will be unable to recover against social hosts).
of their intoxicated guests. As a result, social hosts do not have the “deep pockets” for which most plaintiffs are searching. Therefore, although some cases may significantly limit a plaintiff’s potential compensation, most cases will involve social hosts that are as judgment proof as any drunk driver.

Others have suggested that the Charles II decision will permit the drunk driving tragedy to continue. Justice McMorrow argued that without civil liability, adults can serve alcohol to minors with impunity. In fact, Illinois law offers significant criminal penalties against those that serve alcohol to minors. Moreover, few statistics are available to make a competent prediction on this decision’s effect on the drunk driving problem in Illinois. In the aftermath of the Coulter decision, in which the California Supreme Court established a remedy against social hosts, alcohol related fatalities increased by over twenty percent. Upon the legislature’s abrogation of the Coulter decision, in which the California Supreme Court established a remedy against social hosts, alcohol related fatalities increased by over twenty percent.

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323. Id.
324. See Charles II, 651 N.E.2d at 171-72 (McMorrow, J., dissenting) (claiming that the General Assembly’s efforts to curb drunk driving, while commendable, have not been completely sufficient).
325. Id. at 172 (McMorrow, J., dissenting). Justice McMorrow states: “Under the majority’s holding, adults are free to serve alcohol to minors until the youths are intoxicated, and nevertheless permit the minors to then drive a vehicle in spite of their inebriation.” Id. at 172-73 (McMorrow, J., dissenting).
326. See ILL. COMP. STAT. ANN. ch. 235, § 5/6-16 (West 1992). The relevant portion of the statute reads:

(a) No person, after purchasing or otherwise obtaining alcoholic liquor, shall sell, give or deliver such alcoholic liquor to another person under the age of 21 years, except in the performance of a religious ceremony or service. Any person who violates the provisions of this paragraph of this subsection (a) is guilty of a Class A misdemeanor and the person’s sentence shall include, but shall not be limited to, a fine of not less than $500.

(c) Any person shall be guilty of a Class A misdemeanor where he or she knowingly permits a gathering at a residence which he or she occupies of two or more persons where any one or more of the persons is under 21 years of age and the following factors also apply:

(1) the person occupying the residence knows that any such person under the age of 21 is in possession of or is consuming any alcoholic beverage; and
(2) the possession or consumption of the alcohol by the person under 21 is not otherwise permitted by this Act; and
(3) the person occupying the residence knows that the person under the age of 21 leaves the residence in an intoxicated condition.

Id.
327. See Sparlin, supra note 1, at 616-17.
328. Id. at 616-18.
decision, however, alcohol related fatalities went down. At a minimum, then, it is not known whether the lack of social host liability is likely to affect drunk driving fatalities in Illinois.

VI. CONCLUSION

Although many courts throughout the nation impose liability upon social hosts whose guests cause injury, Illinois courts traditionally did not impose such liability. Starting in 1991, however, appellate courts in Illinois created a district split by imposing social host liability. In 1995, the Supreme Court of Illinois resolved this district split in Charles v. Seigfried. The supreme court correctly held that the Dramshop Act preempts all alcohol related liability. Furthermore, the supreme court correctly determined that, if the traditional Illinois rule against social host liability is to be changed, the General Assembly must be the branch of government to act. Although this decision respected the separation of powers preserved under the Illinois Constitution, the supreme court did not relinquish its ability to change the common law or recognize a civil remedy based on the violation of a statute. Social host liability implicates a number of complicated legal questions, and the court properly reasoned that the General Assembly is most able to formulate a law in this complicated area. Finally, although the legislature will acquiesce in the Charles II decision, the decision will not permit social hosts to serve alcohol to minors with impunity. In fact, serving alcohol to minors continues to be a crime, plaintiffs will still be able to recover for drunk driving related injuries, and little evidence exists to suggest that drunk driving fatalities will increase in Illinois.

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329. Id.
330. See supra part II.A-B.
331. See supra part II.E.
332. See supra part III.B.
333. See supra part IV.
334. See supra part IV.
335. See supra part V.
336. See supra part IV.
337. See supra part V.