University of Dayton Law Review

Volume 16 | Number 3 Article 10

4-1-1991

Tort Law: Parental Liability and the Extension of Social Host Liability to Minors

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TORT LAW: PARENTAL LIABILITY AND THE EXTENSION OF SOCIAL HOST LIABILITY TO MINORS—*Huston v. Konieczny*, 52 Ohio St. 3d 214, 556 N.E.2d 505 (1990).

I. INTRODUCTION

Traditionally, the common law has not held parents directly responsible for the tortious acts of their children.[1] However, various common law theories have been employed to extend liability to parents in certain situations.[2] Additionally, the legislatures of all fifty states have adopted some form of legislation designed to hold parents vicariously liable for their children's wrongful acts.[3] This is a confused area of tort law because more than one exception to the common law rule of parental non-liability can often be applied in a single case. The problem becomes even more complex when the facts of a case touch upon the controversial doctrine of social host liability.

The Ohio Supreme Court faced just such a dilemma in *Huston v. Konieczny*,[4] where a minor and his parents attempted to extend liability to minor social hosts and their parents.[5] This casenote examines the common law exceptions to the traditional rule of parental non-liability and the application of these exceptions by Ohio courts. It then reviews the current status of state legislation which imposes vicarious liability upon parents. This casenote also probes the development of social host liability in Ohio. Finally, this casenote examines the *Huston* court's decision in light of these principles.

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1. *See* Gissen v. Goodwill, 80 So. 2d 701, 703 (Fla. 1955) (parent not liable for child's violent conduct merely because of parent/child relation); Hopkins v. Droppers, 184 Wis. 400, 401, 198 N.W. 738, 739 (1924) (no parental liability without some participation in the wrongdoing); *see also* W. PROSSER & W. KEETON, THE LAW OF TORTS § 123 (5th ed. 1984); J. LEE & B. LINDAHL, MODERN TORT LAW § 29.35 (rev. ed. 1990); Note, *Parental Liability for the Torts of Their Minor Children: Limits, Logic & Legality*, 9 NOVA L.J. 205 (1984). *Cf.* Deshotel v. Travelers Indem. Co., 231 So. 2d 448 (La. Ct. App. 1970), *aff'd*, 257 La. 567, 243 So. 2d 259 (1971) (in civil law jurisdiction liability may be based on the parental relationship alone); Comment, *Civil Responsibility of Parents for the Torts of Children-Statutory Imposition of Strict Liability*, 3 VILL. L. REV. 529, 531-32 (1958).

2. W. PROSSER & W. KEETON, *supra* note 1, § 123 at 912-15. *See generally* T. COOLEY, COOLEY ON TORTS (3d ed. 1986). The following theories have been employed: (1) agency relationship; (2) negligent entrustment of a dangerous instrumentality; (3) negligent supervision or failure to control; and (4) consenting to, directing, or ratifying a child's act. *Id.*

3. *See infra* text accompanying notes 117-33.

4. 52 Ohio St. 3d 214, 556 N.E.2d 505 (1990).

5. *Id.* at 215, 556 N.E.2d at 507; *see infra* text accompanying notes 22-24.

II. FACTS AND HOLDING

On December 31, 1983, Ronald Cordell, Harry Cordell, Jr. and Robert Chio[6] entertained approximately twenty people at their parents' home to celebrate the coming of the new year.[7] Their parents, Harry Cordell, Sr. and Linda Cordell, told the children that they could invite some friends over that evening.[8] Because the Cordell parents knew that the youths would probably have beer at the party, they instructed their children to invite their guests to spend the night.[9] The Cordell parents were not at home the night of the party.[10]

The hosts and most of the people who attended the party were under nineteen years of age,[11] the legal drinking age in Ohio in 1983.[12] Ernest Goodsite bought a pony keg of beer which was placed in the bathtub along with various other containers of beer.[13] Evidently some of the guests also brought their own beer to the party.[14] Robert Huston, Mathew Bodnar, and Lowell Rouanzoin arrived at the party with what was left of a twelve-pack of beer.[15] Mathew Bodnar was driving Huston's automobile when the three young men left the Cordell home several hours later.[16]

The Hustons alleged that Robert Huston's vehicle left the surface of State Route 163 and struck a tree before returning to the roadway.[17] Additionally, the Hustons claimed that either Bodnar or Rouanzoin was driving Huston's car when the vehicle struck the tree and that the pair left Huston, who was semi-conscious, in the vehicle so that it would look as if Huston had been driving when the accident happened.[18] Huston later identified Bodnar as the driver of the car at the time of the initial accident.[19] The Hustons also alleged that Carl Konieczny drove his automobile into Huston's disabled car.[20] The only

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6. Robert Chio is Mrs. Cordell's son from a previous marriage. Huston v. Konieczny, No. 27145, slip op. at 11, n.2 (Ohio App. Mar. 24, 1989) (WESTLAW, States library, Ohio file).

7. *Huston*, 52 Ohio St. 3d at 215, 556 N.E.2d at 507.

8. *Id.*

9. *Id.*

10. *Id.*

11. Brief of Plaintiffs-Appellees at 3, Huston v. Konieczny, 52 Ohio St. 3d 214, 556 N.E.2d 505 (1990) (No. 89-834).

12. *Id.* (citing OHIO REV. CODE ANN. § 4301.69 (Anderson 1989), prior to amendment made effective on July 31, 1987 which increased the legal drinking age in Ohio to twenty-one).

13. *Id.*

14. *Id.*

15. *Id.* at 2.

16. *Id.* at 4.

17. *Huston*, 52 Ohio St. at 215, 556 N.E.2d at 215 (quoting syllabus).

18. *Id.*

19. *Id.* at 215 n.2, 556 N.E.2d at 507 n.2.

20. *Id.* at 215, 556 N.E.2d at 507.

person in the automobile when the second collision occurred was Huston, who was further injured.[21]

Huston and his parents brought an action in the Ottawa County Common Pleas Court against Harry Cordell, Sr., Linda Cordell, Ronald Cordell, Robert Chio, Harry Cordell, Jr., Mathew Bodnar, Bodnar's parents, Lowell Rouanzoin, Rouanzoin's parents, Ernest Goodsite, and others.[22] The Hustons claimed that the Cordell children had negligently obtained alcohol and provided it to other minors.[23] They further claimed that the Cordell parents negligently sponsored a party where minors were permitted to consume alcoholic beverages.[24]

Motions for summary judgment and/or dismissal were filed by all of the defendants.[25] The trial court reviewed the evidentiary record and found no evidence indicating that Mathew Bodnar consumed any alcoholic beverages at the Cordell residence.[26] Because Bodnar, the driver of Huston's car, was found not to have consumed alcohol at the Cordell home, the trial court found no causal connection between Goodsite's or the Cordells' negligence and Huston's ultimate injury.[27] The court found that, without evidence of this requisite element, no genuine issue of material fact existed and the court granted Goodsite and the Cordell family summary judgment as a matter of law.[28] The Hustons appealed the trial court's findings to the Court of Appeals of Ohio, Sixth District.[29] The appellate court found that there were material issues of fact concerning Bodnar's consumption of alcohol.[30]

Goodsite and the Cordells advanced several contentions in support of the summary judgment motion.[31] First, Goodsite and the Cordells jointly argued that, under the rule laid down in *Settlemeyer v. Wilmington Veterans Post No. 49*,[32] social hosts do not owe a duty to third

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21. *Id.*

22. *Id.* Other defendants to the action included the manager, owner, and company in charge of the business where Bodnar, Rouanzoin, and Huston allegedly purchased the initial twelve-pack of beer and also various state and municipal agencies responsible for highway maintenance. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Huston*, slip op. at 6.

27. *Id.*

28. *Id.* at 4-5.

29. *Id.* at 1.

30. *Id.* slip op. at 6. The appellate court based this conclusion on the depositional testimony of Ann Fizer who met the three youths as they were leaving the party. *Id.* Fizer testified that Bodnar had stated that he was drunk. *Id.*

31. *Id.* at 8.

32. 11 Ohio St. 3d 123, 464 N.E.2d 521 (1984). This was a wrongful death action brought against a social provider of alcohol to recover damages for the death of a driver whose car was struck by a car driven by an intoxicated guest of the provider. *Id.* at 123-24, 464 N.E.2d at 521. The court held that in the absence of a statutory violation, social hosts are not liable for injuries

parties for injuries caused to them by a social host's intoxicated minor guests.[33] The appellate court, citing *Mitseff v. Wheeler*,[34] found that social hosts have a duty not to provide minors with alcohol; when the violation of this duty is the proximate cause of injury, social hosts may be held liable.[35] Second, Goodsite and the Cordells argued that summary judgment was proper because the evidence showed that Bodnar's intoxication may have been caused by a variety of sources.[36] The appellate court found this argument unpersuasive because of the ability of the party hosts and their parents to take proper steps to insure that underage guests would not consume alcohol.[37] Third, Goodsite and the Cordells contended that they were entitled to summary judgment because the Hustons had failed to show that their negligence proximately caused Robert Huston's injuries.[38] The Sixth District Court of Appeals dismissed this contention after determining that there was conflicting evidence that raised genuine issues of material fact.[39]

The Cordell parents put forth two additional arguments in support of summary judgment.[40] The first argument alleged that the Hustons failed to state a claim upon which relief could be granted.[41] This argument was founded upon the assertion that parents only owe a duty to victims of their child's intentional torts.[42] Relying on *Levin v. Bourne*,[43] the appellate court stated that if a child acts while under parental control, or if a parent is guilty of negligence, a cause of action may lie.[44] In addition, the court of appeals noted that a parent may incur liability for the tortious acts of a child when they know of the wrong and consent to or sanction it.[45] Because the Hustons alleged that the parents had consented to the children's wrongful conduct, the appellate court

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caused by intoxicated guests while off the host's premises. *Id.*

33. *Huston*, slip op. at 8.

34. 38 Ohio St. 3d 112, 526 N.E.2d 798 (1988). The court distinguished *Settlemeyer* because this case involved furnishing alcohol to minors in violation of statute. *Id.* at 113, 526 N.E.2d at 800.

35. *Huston*, slip op. at 8. The appellate court also noted that *Settlemeyer* is confined to its facts. *Id.* (citing Gressman v. McClain, 40 Ohio St. 3d 359, 361 (1988)).

36. *Id.* at 8-9.

37. *Id.* at 10. The appellate court did not address the fact that the trio had arrived at the party with the remainder of a twelve-pack of beer.

38. *Id.* at 11.

39. *Id.* at 12.

40. *Id.* at 13.

41. *Id.*

42. *Id.*

43. 117 Ohio App. 269, 192 N.E.2d 114 (1962). Parental liability for injuries caused by a child operating a motor vehicle was established by statute. *Id.* at 270, 192 N.E.2d at 115.

44. *Huston*, slip op. at 13.

45. *Id.* (citing Southern Am. Fire Ins. Co. v. Maxwell, 274 So. 2d 579 (Fla. App. 1973) and other authorities).

concluded that the Hustons had stated a claim against the Cordell parents.[46]

The Cordells' second argument alleged that there was no evidence that the Cordell parents personally provided beer to Bodnar; thus, the Hustons' claim was not sufficiently supported.[47] The appellate court disagreed with this contention for essentially the same reasons that it found an actionable claim for damages existed.[48] Accordingly, the appellate court rejected the arguments of Goodsite and the Cordells and reversed the trial court's grant of summary judgment.[49]

Goodsite and the Cordells appealed to the Ohio Supreme Court.[50] The supreme court reviewed the appeal using a three-step analysis.[51] The court construed the facts in the light most favorable to Huston, assuming that Bodnar was the driver of the automobile when the first collision occurred and that Bodnar had become intoxicated at the Cordell home.[52] The supreme court then determined that the Cordell parents could be held liable for injuries sustained as a result of Bodnar's intoxication.[53] Finally, the court found that, with respect to the source of Bodnar's intoxication, under an alternative liability theory, the Hustons had produced sufficient evidence to withstand summary judgment.[54] Therefore, the Ohio Supreme Court affirmed the decision of the appellate court and remanded the case to the trial court for further proceedings.[55] Judge Holmes dissented, finding insufficient evidence to support parental liability or proximate causation.[56]

III. BACKGROUND: PARENTAL LIABILITY

A. The History of Common Law Parental Liability

Historically, under common law, parents are not vicariously liable for the tortious acts of their minor children solely because of paternity.[57] Consequently, a child is traditionally held legally responsible for

46. *Id.* at 14.
47. *Id.*
48. *Id.*
49. *Id.* at 15.
50. Huston v. Konieczny, 52 Ohio St. 3d 214, 216, 556 N.E.2d 505, 507 (1990).
51. *Id.* at 216, 556 N.E.2d at 508.
52. *Id.* at 216-17, 556 N.E.2d at 508.
53. *Id.* at 217, 556 N.E.2d at 508.
54. *Id.* at 218-19, 556 N.E.2d at 509-10. "Under alternative liability theory, plaintiff must prove (1) that two or more defendants committed tortious acts, and (2) that plaintiff was injured as a proximate result of the wrongdoing of one of the defendants." *Id.* at 219, 556 N.E.2d at 510 (quoting Goldman v. Johns-Manville Sales Corp., 33 Ohio St. 3d 40, 514 N.E.2d 691 (1987)).
55. *Id.* at 219, 556 N.E.2d at 510.
56. *Id.* at 220, 556 N.E.2d at 511 (Holmes, J., dissenting).
57. See supra note 1.

his own actions.[58] In certain situations,[59] however, a parent may be held financially accountable for his child's wrongdoing. These inroads to the common law principle have been adopted primarily because children are often incapable of making adequate restitution[60] and also because parents stand in a unique position which enables them to exert a certain amount of control over their children.[61]

Parental liability is based upon three general legal doctrines. First, a parent may be held vicariously liable[62] under the doctrine of *respondeat superior*[63] for acts that occur while a master/servant[64] or principal/agent[65] relationship exists between the parent and the child.[66] For example, a master/servant or principal/agent relationship may exist when the the parent employs his child in the family business. This theory of liability, however, does not extend from the parent-child relationship but rather from the laws of agency.[67] Second, parental liability

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58. *Id.*

59. *See supra* note 2.

60. W. PROSSER & W. KEETON, *supra* note 1, § 123.

61. Comment, *Liability of Negligent Parents for the Torts of their Minor Children*, 19 ALA. L. REV. 123 (1966).

62. "[I]t is a rule of strict liability with respect to the master—that is, liability without violation of any duty by him personally . . . ." W. SEAVEY, LAW OF AGENCY § 83 (1964).

63. " 'Respondeat Superior' is the phrase used by the courts to indicate the area within which a master is liable for the torts of servants which, although committed disobediently, are connected with the service of the employer." *Id.*

64. *The Restatement (Second) of Agency* provides:

(1) A master is a principle who employs an agent to perform service in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service.

(2) A servant is an agent employed by a master to perform service in his affairs whose physical conduct in the performance of the service is controlled or is subject to the right to control by the master.

RESTATEMENT (SECOND) OF AGENCY § 2 (1958).

65. The *Restatement (Second) of Agency* states:

(1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.

(2) The one for whom action is to be taken is the principal.

(3) The one who is to act is the agent.

RESTATEMENT (SECOND) OF AGENCY § 1 (1958).

66. *See* de Anda v. Blake, 562 S.W.2d 497 (Tex. Ct. App. 1978) (mother liable for the negligence of minor daughter when operating automobile for mother's benefit); Lessoff v. Gordon, 58 Tex. Civ. App. 213, 124 S.W. 182 (1909) (father's liability for child's acts done in the course of employment is governed by the rules of agency); *see also* W. PROSSER & W. KEETON, *supra* note 1, § 123; J. LEE & B. LINDAHL, *supra* note 1, § 29.37.

67. *See* Smith v. Davenport, 45 Kan. 423, 25 P. 851 (1891) (parent not liable for wrongful acts committed by minor child when not connected with the parent's business or done with the parent's consent); Bell v. Hudgins, 232 Va. 491, 352 S.E.2d 332 (1987) (in the absence of agency relationship, parents are not liable for intentional tort of child unless based upon the parent's negligence).

may be based upon the parent's negligence.[68] This negligence, however, is irrelevant unless accompanied by a wrongful act on the part of the child.[69] "It is the act of the child . . . which is the cause in fact of the injury."[70] The third type of common law exception extends liability when the parent is said to have participated in the wrongful conduct.[71]

A parent may be held negligent for entrusting a minor with an instrumentality[72] that is either inherently dangerous,[73] or that becomes dangerous due to the child's age and inexperience.[74] Liability can attach even when a parent has merely made the instrumentality accessible to his minor child.[75] One of the basic foundations of the dangerous instrumentality doctrine is the ability of the parent to control the minor child's actions.[76] For this reason, courts often juxtapose the dangerous instrumentality doctrine and the doctrine of failure to control depending upon how the facts of each case are interpreted.[77]

Parental negligence may also stem from inadequate supervision or control of a child.[78] When a parent has the opportunity and ability to

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68. *See, e.g.*, 2 F. HARPER, F. JAMES & O. GRAY, THE LAW OF TORTS § 8.13 (2nd ed. 1986).

69. Bankert v. Threshermen's Mut. Ins. Co., 110 Wis. 2d 469, 472, 329 N.W.2d 150, 153 (1983).

70. *Id.* at 473, 329 N.W.2d at 154.

71. *See* F. HARPER, F. JAMES & O. GRAY, *supra* note 68, § 8.13.

72. *See* Howell v. Hairston, 261 S.C. 292, 199 S.E.2d 766 (1973) (allegation that parents were negligent in providing eleven year old boy with air rifle, an instrument of dangerous potentialities, should not have been stricken); *see also* Prater v. Burns, 525 S.W.2d 846 (Tenn. Ct. App. 1975) (proof of child's behavior at the time of injury is admissible evidence on the issue of parent's negligence in allowing a child to possess a firearm).

73. *See generally Howell*, 361 S.C. at 300-01, 199 S.E.2d at 770 (provides discussion on what constitutes a dangerous instrumentality).

74. *See* Hill v. Morrison, 160 Ga. App. 151, 286 S.E.2d 467 (1982) (issue of material fact as to whether parents were negligent in giving their nine year old son a go-cart and then failing to supervise him).

75. *See* Seabrook v. Taylor, 199 So. 2d 315 (Fla. Dist. Ct. App. 1967) (question of parent's negligence in keeping loaded pistol where fourteen year old child could obtain it was properly submitted to the jury), *cert. denied*, 204 So. 2d 331 (Fla. 1967); *see also* Kuhns v. Brugger, 390 Pa. 331, 135 A.2d 395 (1957) (grandfather was negligent in leaving a loaded pistol in unlocked drawer of room where grandchildren frequently played); Stanley v. Joslin, 757 S.W.2d 328 (Tenn. Ct. App. 1988) (parent leaving firearm in unlocked gun rack, accessible to children, may be negligent). *But see* Napiearlski v. Pickering, 278 A.D. 456, 106 N.Y.S.2d 28 (1951) (no liability where parent kept gun in place accessible to child who discharged it, injuring another).

76. *See* Comment, *supra* note 61, at 130.

77. *See*; *e.g.*, Bankert v. Threshermen's Mut. Ins. Co., 110 Wis. 2d 469, 471, 329 N.W.2d 150, 152 (1983) (discussing the difficulties courts have had in differentiating between negligent entrustment and failure to control).

78. *See* Bieker v. Owens, 239 Ark. 97, 350 S.W.2d 522 (1961) (complaint alleging that parents had knowledge of children's dangerous tendencies and that children had committed assault stated a cause of action for failure to control); *see also* Condel v. Savo, 350 Pa. 350, 39 A.2d 51 (1944) (parents' knowledge and approval of minor son's tortious acts sufficient to charge parents with negligence).

control a child with a known propensity to commit harmful acts and fails to reasonably restrain the child, the parent will be liable if he knows, or in the exercise of due care should know, that injury to another is a probable result.[79] In the case of *Parsons v. Smithey*,[80] the parents of a minor who committed a particularly violent assault with a hammer, a belt, and a knife were found to be not liable where a reasonable parent would not have foreseen, from prior conduct, that the minor would commit such a violent act.[81] Similarly, the Florida Supreme Court, in *Gissen v. Goodwill*,[82] found that the parents of a young child who deliberately swung a door closed severing a hotel clerk's finger, did not have sufficient notice of the child's vicious propensities.[83] Thus, one approach to the failure to control exception requires that parents have knowledge of a course of similar prior acts which would alert them that the act in question was likely to occur before the parents could be held liable.[84]

A broader approach to the failure to control exception is to simply apply general negligence principles and attach liability to the parents where they have failed to use due care under the particular conditions.[85] In *Southern American Fire Insurance Co. v. Maxwell*,[86] a Florida court employed this approach and held that the issue of whether the parents had failed to use due care, in allowing their five year old child to operate a bicycle without supervision, properly went before the jury.[87] The court stated that "[i]n these cases the question of liability is

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79. *See infra* text accompanying notes 83-87.

80. 109 Ariz. 49, 504 P.2d 1272 (1973).

81. *Id.* at 54, 504 P.2d at 1277.

82. 80 So. 2d 701 (Fla. 1955).

83. *Id.* at 705-06.

84. *See generally* Note, *supra* note 1, at 212-13. Some courts employ a very restrictive approach requiring that in order to find that parents should have foreseen the injury, the child's prior acts must be essentially the same as the wrongful act in question. *See, e.g.*, Bieker v. Owens, 234 Ark. 97, 350 S.W.2d 522 (1961) (parents could be held liable when they had knowledge of prior assaults by their sons and failed to take constructive action); Martin v. Barrett, 120 Cal. App. 2d 625, 261 P.2d 551 (1953) (no liability where parents did not have knowledge of earlier misuse of airgun); Linder v. Bidner, 50 Misc. 2d 320, 270 N.Y.S.2d 427, 429-30 (1966). "[A] parent is negligent when there has been a failure to adopt reasonable measures to prevent a *definite* type of harmful conduct on the part of the child . . . ." *Id.* at 324, 270 N.Y.S.2d at 430 (emphasis in original).

85. The *Restatement (Second) of Torts* states:

> A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent
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> (a) knows or has reason to know that he has the ability to control his child, and
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> (b) knows or should know of the necessity and opportunity for exercising such control.

RESTATEMENT (SECOND) OF TORTS § 316 (1965).

86. 274 So. 2d 579 (Fla. App. 1973).

87. *Id.* at 580.

to be determined on the broad basis of whether or not the parent has been guilty of negligence, that is, a failure to use due care in the circumstances."[88]

Liability may also extend to parents when a parent is said to have participated in the wrongful conduct[89] by encouraging[90] or directing[91] a child's act or ratifying the child's act by accepting its benefits.[92] For example, in *Hower v. Ulrich*,[93] a father was held liable in a trespass action after accepting corn from his children which he knew to be stolen.[94] This doctrine apparently developed from the master/servant theory of the law of agency but has since diverged and developed some of its own peculiar precedents which do not expressly rely on agency or negligence principles.[95]

B. *The History of Parental Liability in Ohio*

Under Ohio common law, much like the laws of the other states,[96] parents are not normally held directly responsible for the tortious acts of their children.[97] However, Ohio has also followed the lead of other states[98] in recognizing the exceptions to the traditional common law rule of parental non-liability. The law of agency has been applied in Ohio as a theory of liability which an injured party may employ, under certain circumstances, to recover against the parents of a minor tortfeasor.[99]

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88. *Id.* at 581 (citing Seabrook v. Taylor, 199 So. 2d 315 (Fla. App. 1967)).

89. *See generally* F. HARPER, F. JAMES & O. GRAY, *supra* note 68, § 8.13.

90. *See, e.g.*, Hopkins v. Droppers, 184 Wis. 400, 198 N.W. 738 (1924) (father who bought minor son an automobile and permitted him to drive it encouraged his son to violate a state statute); Ryley v. Lafferty, 45 F.2d 641 (N.D. Idaho 1930) (parents may be liable for encouraging child's wrongful conduct when they take offense at any resistance by other adults to child's earlier wrongful conduct).

91. *See, e.g.*, Trahan v. Smith, 239 S.W. 345 (Tex. Ct. App. 1922). "As a general rule, to hold a parent liable for the tortious act of his minor child, it must appear that the tort was committed at the direction of the parent, express or implied, or within the scope of duties imposed upon the minor by the parent." *Id.* at 347.

92. *See* Langford v. Shu, 258 N.C. 135, 128 S.E.2d 210 (1962) (parental consent to or ratification of child's tortious act is basis for liability); *see also* W. PROSSER & W. KEETON, *supra* note 1, § 123; Kent, *Parental Liability for the Torts of Children*, 50 CONN. B. J. 452, 457-58 (1976).

93. 156 Pa. 410, 27 A. 37 (1893).

94. *Id.*

95. F. HARPER, F. JAMES & O. GRAY, *supra* note 68, § 8.13.

96. *See supra* note 1.

97. *See* Ringhaver v. Schlueter, 23 Ohio App. 355, 155 N.E. 242 (1919) (parental liability must be based on something more than the relationship between parent and child); *see also* Lacker v. Ewald, 11 Ohio Dec. 337 (1901) (parent not liable for child's wrongful conduct based solely on the parent-child relationship).

98. *See supra* note 2.

99. *See, e.g.*, Elms v. Flick, 100 Ohio St. 186, 126 N.E. 66 (1919) (parental liability based on agency relationship); Riley v. Speraw, 12 Ohio Abs. 420, 423 (1931) (liability of father for daughter's negligence based on laws of agency).

Additionally, the doctrine of negligent entrustment has been used on occasion in Ohio.[100] In *Davis v. Mack*,[101] the Common Pleas Court of Hamilton County found that the natural guardian of a nineteen year old could be held liable for subsequent injuries where the guardian had permitted the minor to possess loaded revolvers.[102] There are no known cases in Ohio where the act of leaving a dangerous instrumentality merely accessible to a child has been held sufficient to constitute negligence on the part of a parent.[103] However, in Ohio, actually entrusting a minor with an instrumentality which is not *inherently* dangerous may constitute negligence under certain circumstances.[104]

The Ohio courts have also employed failure to control as a means of providing redress for victims of childrens' tortious acts.[105] Under this theory, as historically applied in Ohio, parents who are aware of their child's violent propensities may be found liable when they fail to control the child in situations of potential hazard.[106] *Landis v. Condon*[107] involved an action brought against the parents of a fourteen year old boy who allegedly assaulted another child. The Ohio Court of Appeals for Montgomery County found that the assertion of the vicious propensities of the child, combined with the assertion that the parents had knowledge of the child's disposition, was sufficient to withstand a demurrer.[108] Analogously, the Ohio Court of Appeals for Cuyahoga County, in *Cashman v. Reider's Stop-N-Shop Supermarket*,[109] re-

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100. The *Restatement (Second) of Torts* states that:

> One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

RESTATEMENT (SECOND) OF TORTS § 390 (1965).

101. 15 Ohio Op. 4 (1939).

102. *Id.*

103. *See, e.g.*, Lacker v. Ewald, 11 Ohio Dec. 337, 338 (1901) (when child intentionally shoots a licensed animal, father is not liable for negligently leaving the gun exposed).

104. *See* Taylor v. Webster, 12 Ohio St. 2d 53, 231 N.E.2d 870 (1967) (permitting ten year old son to use airgun was negligence per se because use violated the statute); *see also* Joseph v. Peterson, 108 Ohio App. 519, 160 N.E.2d 420 (1959) (injury caused by minor with bow and arrow, necessary for plaintiff to show parents had knowledge of child's incompetence); Elliott v. Harding, 107 Ohio St. 501, 140 N.E. 338 (1923) (father may be liable for injuries after entrusting minor son with automobile if father knew of minor's lack of skill).

105. *See infra* text accompanying notes 107-11.

106. *See* Cluthe v. Svendsen, 9 Ohio Dec. Reprint 458 (1885) (plaintiff sought to recover for injuries sustained when kicked by six year old child); *see also infra* text accompanying notes 107-11.

107. 95 Ohio App. 28, 116 N.E.2d 602 (1952).

108. *Id.* at 29, 116 N.E.2d at 603.

109. 29 Ohio App. 3d 142, 504 N.E.2d 487 (1986).

versed a summary judgment for the mother of a four year old girl, who, while pushing a shopping cart, struck and injured an elderly woman.[110] In *Cashman*, the court held that a material question of fact existed as to whether the mother had knowledge of the child's disposition and, therefore, had violated her duty to control the child.[111]

Ohio law has also supported the idea that a parent may be guilty of negligence for consenting to or authorizing the tortious conduct of the child.[112] For example, in *Wery v. Seff*,[113] the Supreme Court of Ohio determined that a father who had allowed his fifteen year old son to drive the family automobile contrary to a city ordinance, could be joined in a negligence action arising from the child's negligent operation of the automobile.[114]

Adopting these narrow inroads to the parental non-liability theory allowed Ohio courts to provide a means for recovery against parents without abrogating the traditional rule that parents are not directly responsible for a child's wrongful conduct. In this way, victims of childrens' torts are able to receive some compensation where under the general principle of non-liability, recovery would essentially be denied.[115] Moreover, it is generally thought that holding parents responsible in certain limited types of situations will impress upon them the necessity of providing adequate supervision and guidance.[116]

C. *Statutory Parental Civil Liability*

In keeping with the justifiable concerns of victim compensation and adequate supervision, state legislatures have gone beyond the limits imposed by the common law and adopted legislation which holds parents vicariously liable for their childrens' tortious acts.[117] These statutes differ, however, as to what criteria must be met in order to impute liability.[118] For example, each state has specified a maximum age of the tortfeasor and some have also provided a minimum.[119] The tortfeasor must be within the age range specified by the statute in order to extend liability to the parents. The statutes also vary as to what state of mind

110. *Id.* at 144, 504 N.E.2d at 490.

111. *Id.*

112. Cameron v. Heister, 10 Ohio Dec. Reprint 651 (1889) (court reversed a nonsuit for defendant finding child's discharge of a rocket may have been with the consent and encouragement of the parent). No Ohio cases were found which expressly relied upon a parent's acceptance of the benefits from the child's tort to extend liability.

113. 136 Ohio St. 307, 25 N.E.2d 692 (1940).

114. *Id.*

115. *See* W. PROSSER & W. KEETON, *supra* note 1, § 123; Note, *supra* note 1, at 205-06.

116. *See* Note, *supra* note 1, at 205-06.

117. *See* attached appendix of state statutes.

118. *Id.*

119. *Id.*

the child must have in order to extend liability to the parent.[120] Most states require that the act be malicious, willful or wanton.[121] The child's negligence is a basis for recovery under only one state's legislation.[122] All of the states have provided for limited recovery, in most instances, for property damage[123] while only half of the states have allowed recovery for personal injuries.[124] These vicarious liability statutes have withstood constitutional challenges on a number of occasions and have been upheld as valid exercises of legislative power.[125]

Ohio has two parental liability statutes. The first, Ohio Revised Code Section 3109.09, is designed to provide for recovery from parents whose minor children have willfully damaged property or have committed an act which constitutes a "theft offense"[126] under Ohio law.[127] The damages are limited to three thousand dollars, although an action under this section may be joined with an action for replevin to recover the full value of property lost.[128] The legislature's purpose in enacting this statute was not expressly recorded in any legislative history.[129] However, at least one Ohio court has determined that the primary purpose of this legislation is compensatory in nature and that the legislature may also have intended to curb juvenile delinquency as an addi-

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120. *Id.*

121. *Id.*

122. *Id.*; *see* TEX. FAM. CODE ANN. §§ 33.01, 33.02 (Vernon 1986). This statute states in part that:

> A parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage proximately caused by:
>
> (1) the negligent conduct of the child *if the conduct is reasonably attributable to the negligent failure of the parent or other person to exercise that duty.*

TEX. FAM. CODE ANN. § 33.01 (Vernon 1986) (emphasis added).

123. *See* attached appendix of state statutes. Only Florida's legislation provides for recovery of actual damages. FLA. STAT. ANN. § 741.24 (West Supp. 1990).

124. *Id.*

125. *See, e.g.*, Watson v. Gradzik, 34 Conn. Supp. 7, 373 A.2d 191 (Super. Ct. 1977) (statute did not interfere with the fundamental right to bear and raise children); Hayward v. Ramick, 248 Ga. 841, 285 S.E.2d 697 (1982) (statute upheld on due process grounds); General Ins. Co. v. Faulkner, 259 N.C. 317, 130 S.E.2d 645 (1963) (statute found not to be a denial of state or federal due process); Rudnay v. Corbett, 53 Ohio App. 2d 311, 374 N.E.2d 171 (1977) (statute comports with due process requirements); Kelly v. Williams, 346 S.W.2d 434 (Tex. Ct. App. 1964) (statute not violative of due process or equal protection); Mahaney v. Hunter Enters., Inc., 426 P.2d 442 (Wyo. 1967) (statute withstood challenge on due process and equal protection grounds).

126. OHIO REV. CODE ANN. § 2913.01 (Anderson 1987) (defining a "theft offense").

127. OHIO REV. CODE ANN. § 3109.09 (Anderson 1987).

128. *Id.*

129. Rudnay v. Corbett, 53 Ohio App. 2d 311, 315, 374 N.E.2d 171, 173 (1977) (citing Laven, *Liability of Parents for the Willful Torts of Their Children Under Ohio Revised Code Section 3109.09*, 24 CLEV.-MAR. L. REV. 32 (1975)).

tional goal.[130] This court also found that the statute's compensatory purpose, combined with its limits on damages, enabled the legislation to withstand due process challenges.[131]

The second parental liability statute, Ohio Revised Code Section 3109.10, extends liability to parents of children, under the age of eighteen, who commit a willful and malicious assault.[132] Parents are vicariously liable under this section up to the amount of two thousand dollars.[133] No legislative history is available to determine the legislature's purpose in enacting this statute but it is reasonable to assume that the main intent was essentially the same as that of the property damage statute, to provide some compensatory redress to innocent victims.

D. The History of Social Host Liability in Ohio

Parental liability is a complex area of the law and it becomes even more so when the facts of a case fall within the theory of social host liability. Ohio courts have attempted to avoid totally abrogating the common law rule that those who provide alcohol in a social setting are not, for that reason alone, liable for injuries stemming from a guest's intoxication.[134] However, the Ohio Supreme Court recognized certain limited exceptions to the general rule of social host non-liability in *Mason v. Roberts*.[135] This case dealt solely with the sale of intoxicating beverages by a commercial provider.[136] The court recognized the exception that, when the sale of intoxicating beverages is in violation of a statute,[137] the sale may be found to be the proximate cause of ensuing

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130. *Id.* (court reviewed amendments to both language and recovery limits of Ohio Revised Code Section 3109.09 and concluded that the evolution of the statute showed intention to provide compensation for innocent victims of children's torts).

131. *Id.* at 316, 374 N.E.2d at 175.

132. Ohio Revised Code Section 3109.10 provides that:

> Any person is entitled to maintain an action to recover compensatory damages in a civil action . . . from the parents who have the custody and control of a child under the age of eighteen, who willfully and maliciously assaults the person by means or force likely to produce great bodily harm.

OHIO REV. CODE ANN. § 3109.10 (Anderson 1987).

133. *Id.* The liability limits under sections 3109.09 and 3109.10 do not apply to actions brought under Ohio Revised Code Section 2307.70 which governs civil actions for vandalism, desecration and ethnic intimidation. *Id.*; OHIO REV. CODE ANN. § 3109.09 (Anderson 1987).

134. *See generally* Note, *Social Host Liability for the Negligent Acts of Intoxicated Minors*, 14 U. DAYTON L. REV. 377 (1989) (in depth discussion on the evolution of social host liability in Ohio).

135. 33 Ohio St. 2d 29, 294 N.E.2d 884 (1973) (wrongful death action against a tavern owner for serving intoxicated patron).

136. *Id.*

137. In *Mason*, the court considered Ohio Revised Code Section 4301.22, which prohibits the sale of beer and intoxicating liquor to an intoxicated person. *Id.* at 33, 294 N.E.2d at 887-88. The *Mason* court also determined that a jury may consider evidence as to whether the seller had knowledge that the patron was too intoxicated to refuse additional alcohol. *Id.* at 33, 294 N.E.2d at 887.

injuries.[138] The Ohio Court of Appeals for Hamilton County, in *Taggert v. Bitzenhofer*,[139] expanded upon this limited exception by proclaiming that violation of Ohio Revised Code Section 4301.22[140] is negligence per se, therefore providing a legitimate basis for civil liability.[141] In *Mitseff v. Wheeler*,[142] the Supreme Court of Ohio, while still clinging to the common law rule of non-liability, allowed an injured party to recover by employing the *Mason* exception.[143] *Mitseff* involved a violation of Ohio Revised Code Section 4301.69,[144] a statute prohibiting selling or furnishing alcohol to minors.[145] The *Mitseff* court's reasoning, similar to that in *Taggert*, was that a civil action may be maintained against an adult who provides alcohol to a minor in violation of the statute.[146] The *Mitseff* holding expanded the liability of social hosts who provide alcohol to minors, contrary to statute, to injuries that result from the minors' intoxication.[147] This limited expansion of the social host theory of liability has been adopted by courts in other states.[148]

Courts in other jurisdictions have further extended liability of social hosts to those who, while not personally furnishing alcohol to minors, intentionally assist minor guests in their consumption of alcohol.[149] In *MacLeary v. Hines*,[150] the United States Court of Appeals for the Third Circuit, applying Pennsylvania law, found that a minor social host who permits other minors to consume alcoholic beverages on

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138. *Id.*

139. 35 Ohio App. 2d 23, 299 N.E.2d 901 (1972), *aff'd*, 33 Ohio St. 2d 35, 294 N.E.2d 226 (1973).

140. *See supra* note 137.

141. *Taggert*, 35 Ohio App. 2d 23, 299 N.E.2d 901 (1972) (barmaid served alcohol to visibly intoxicated patron after patron brandished pistol and threatened to kill decedent, who was thereafter shot and killed by the patron).

142. 38 Ohio St. 3d 112, 526 N.E.2d 798 (1988) (wrongful death action against social host and minor who, after being served alcohol by host, was involved in a motor vehicle accident that resulted in death).

143. *See id.*; *see generally* Note, *supra* note 134, at 393 (focusing on *Mitseff*).

144. OHIO REV. CODE ANN. § 4301.69 (Anderson 1989).

145. *Id.*

146. *Mitseff*, 38 Ohio St. 3d at 114, 526 N.E.2d at 800.

147. *Id.*; *see also* Note, *supra* note 134 at 393.

148. *See* Brittain v. Herron, 159 Ind. App. 663, 674, 309 N.E.2d 150, 156 (1974) (giving alcohol to minor in violation of statute is negligence per se and can result in civil liability); Walker v. Key, 101 N.M. 631, 636, 686 P.2d 973, 978 (1984) (valid wrongful death action existed against social hosts who provided minor with alcohol contrary to statute). *But cf.* Bennett v. Letterly, 74 Cal. App. 3d 901, 905, 141 Cal. Rptr. 682, 684 (1977) (minor who contributed money for purchase of liquor by other minors did not "furnish" alcohol because he did not have possession or control over the alcohol).

149. *See* cases cited *infra* text accompanying notes 150-152.

150. 817 F.2d 1081 (3rd Cir. 1987).

premises over which she has control can be held liable when an intoxicated guest places himself in a position of unreasonable risk and becomes injured by a third person.[151]

At least one jurisdiction has expanded this theory of liability to parents who provide inadequate supervision for their minor children. In *Morella v. Machu*,[152] a motorist who was injured when his vehicle was struck by a car driven by an intoxicated youth brought suit against the parents of the minors who hosted the party where the minor driver had become intoxicated.[153] The New Jersey Superior Court, Appellate Division, adopted the broad approach to failure to control.[154] The court held that parental liability can be predicated upon the failure of a minor hosts' parents to provide proper supervision when it is reasonably foreseeable that, in the parents' absence, the teenagers might sponsor a party where alcoholic beverages would be available.[155]

In contrast to the *Morella* decision, the Supreme Judicial Court of Massachusetts, in *Langemann v. Davis*,[156] refused to extend liability to the parent of a minor social host.[157] The *Langemann* plaintiff was injured when his car was involved in an accident with a car driven by a minor who had been served intoxicants at the party by another guest.[158] The minor host's parent had permitted her child to have a party while she was not at home but claimed to have had no knowledge that alcohol would be served at the party.[159] The *Langemann* court concluded that, even if the parent knew or should have known that alcohol would be available at the party, a cause of action for negligent supervision could not be brought because "a parent who neither provides alcoholic beverages nor makes them available, owes [no] duty to travelers on the highways to supervise a party given by her minor child."[160]

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151. *Id.* This finding was premised on an earlier holding by the Supreme Court of Pennsylvania recognizing that a civil cause of action may be maintained. *Id.* at 1082.

152. 235 N.J. Super. 604, 563 A.2d 881 (1989) (not relying on statute but recognizing legislative policy as justification for extending liability).

153. *Id.* The Morella parents had left specific instructions that no "drinking parties" were to be held at the house while they were gone. *Id.* at 607, 563 A.2d at 883.

154. *Id.* at 610, 563 A.2d at 884; *see also supra* text accompanying notes 86-89.

155. *Id.* at 611, 563 A.2d at 885. The *Morella* court also found that the parents' negligence could be based upon agency principles because the parents had employed a twenty year old to supervise the children. *Id.*

156. 398 Mass. 166, 495 N.E.2d 847 (1986).

157. *Id.* at 168-69, 495 N.E.2d at 848.

158. *Id.*

159. *Id.* at 166-67, 495 N.E.2d at 847.

160. *Id.* at 168, 495 N.E.2d at 848.

IV. ANALYSIS

In *Huston v. Konieczny*,[161] the Ohio Supreme Court, while refusing to accept a comprehensive theory of social host liability, fashioned a theory of liability upon which the plaintiffs could recover.[162] The supreme court recognized a narrow extension of the *Mitseff v. Wheeler*[163] holding and found that a civil action could be maintained against the defendant children because the statutory prohibition on furnishing alcohol to minors applied to children as well as adults.[164]

The Cordell parents argued, however, that they would only be liable if they had personally served Bodnar intoxicating beverages.[165] In response to this argument, the *Huston* court relied upon the Pennsylvania case of *Kuhns v. Brugger*[166] and the Wisconsin case of *Bankert v. Threshermen's Mutual Insurance Co.*[167] to establish the principle that liability may be based upon a parent's negligent act when the injury caused by the child is a foreseeable consequence of the parent's negligence.[168] Although the facts were hardly analogous to those in *Huston*, these cases supported the general standard stated by the court.[169] The supreme court then outlined three of the theories which have been used to hold parents responsible for their childrens' torts and applied each theory to the case's facts.[170]

First, the court depended upon *Davis v. Mack*[171] and *Bankert* to support the theory of negligent entrustment.[172] Because of the vague reasoning used by the court in *Huston*, it is unclear how the theory of negligent entrustment was intended to support the court's holding. The *Davis* case involved a guardian's negligence in permitting a minor to keep "deadly weapon[s],"[173] and *Bankert* involved the negligent en-

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161. 52 Ohio St. 3d 214, 556 N.E.2d 505 (1990).

162. *Id.* at 218-19, 556 N.E.2d at 509-10.

163. 38 Ohio St. 3d 112, 526 N.E.2d 798 (1988).

164. *Huston*, 52 Ohio St. 3d at 217, 556 N.E.2d at 509. This extension had also been recognized at the appellate level. *See supra* text accompanying notes 34-35.

165. This contention was also put forth in the court of appeals. *See supra* text accompanying notes 47-49.

166. 390 Pa. 331, 135 A.2d 395 (1957).

167. 110 Wis. 2d 469, 329 N.W.2d 150 (1983).

168. *Huston*, 52 Ohio St. 3d at 217-18, 556 N.E.2d at 509.

169. *Kuhns*, 390 Pa. at 343, 135 A.2d at 407 (injury foreseeable consequence of grandparent's negligence in leaving firearm accessible); *Bankert*, 110 Wis. 2d at 475-79, 329 N.W.2d at 153-54 (negligent entrustment of motorcycle, court explained that liability is based on parents' negligence).

170. *Huston*, 52 Ohio St. 3d at 217-18, 556 N.E.2d at 509.

171. 15 Ohio Op. 4 (1939).

172. *Huston*, 52 Ohio St. 3d at 217, 556 N.E.2d at 509.

173. 15 Ohio Op. at 5.

trustment of a motorcycle.[174] The Cordell parents merely entrusted their children with the family home,[175] which admittedly may become dangerous under certain circumstances; however, a house has never been defined by any court as the type of instrumentality which may fall into this exception. Because the court did not specify the relevance of negligent entrustment, the only inference to be drawn from the court's reasoning is that this theory was intended to illustrate the idea of reasonable foreseeability or, alternatively, that the premises became dangerous because it was used as a place for underage persons to consume alcohol.

Second, the Ohio Supreme Court discussed the theory of failure to control as a possible basis for holding the Cordell parents liable for Huston's injuries.[176] The court cited the Ohio cases of *Cashman v. Reider's Stop-N-Shop Supermarket*[177] and *Landis v. Condon*[178] to support this contention.[179] As a prerequisite to extension of liability, the courts in both of these cases recognized that the parent must have knowledge or should have had knowledge of habits or tendencies which would impress upon the parent the necessity of controlling the child.[180] In an attempt to add additional strength to its position, the *Huston* court cited *Parsons v. Smithey*[181] and *Gissen v. Goodwill*.[182] These two cases essentially require that, in order to hold parents liable for a failure to supervise or control the conduct of their children, it is incumbent upon a plaintiff to show that the parents knew or should have known that the child had engaged in at least a similar course of prior conduct leading to the act in question.[183] In the *Huston* case, there was no allegation by the Hustons that the Cordell children had previously supplied alcohol to other minors or, for that matter, had ever before committed a wrongful act.[184] The supreme court quoted the broad language of the *Restatement (Second) of Torts*[185] and in the end adopted the straight negligence approach to failure to control but cited cases employing the narrower approach which requires a history of similar wrongful acts.[186]

174. 110 Wis. 2d at 471-72, 329 N.W.2d at 151.
175. *Huston*, 52 Ohio St. 3d at 215, 556 N.E.2d at 507.
176. *Id.* at 217-18, 556 N.E.2d at 509.
177. 29 Ohio App. 3d 142, 504 N.E.2d 487 (1986).
178. 95 Ohio App. 28, 116 N.E.2d 602 (1952).
179. *Huston*, 52 Ohio St. 3d at 217-18, 556 N.E.2d at 509.
180. *See supra* text accompanying notes 107-11.
181. 109 Ariz. 49, 504 P.2d 1272 (1973).
182. 80 So. 2d 701 (Fla. 1955).
183. *See supra* text accompanying notes 80-84.
184. 52 Ohio St. 3d 214, 556 N.E.2d 505.
185. *See supra* text accompanying notes 85-88.
186. *See* cases cited *supra* text accompanying notes 177-185; *see also supra* text accompanying notes 78-84.

Therefore, based on the authorities used by the *Huston* court, the theory of failure to control provides little foundation for the court's ultimate holding.

Finally, the *Huston* court attempted to justify extending liability to the defendant parents through the exception to the common law rule which imposes liability when "parents know of the child's wrongdoing and consent to it, direct it or sanction it."[187] This may be the most legitimate rationale employed by the *Huston* court simply because of the language used by the earlier courts. The Cordell parents' conduct would seem to fall into this exception because they were aware that there would probably be beer at the party and had instructed their children to have their guests spend the night.[188]

The supreme court relied upon *Wery v. Seff*[189] and *Bankert*[190] as a foundation for the consent exception.[191] Although use by the courts of such terms as "allow" and "permit" may provide some support for this rather nebulous fourth exception, these cases also involved negligent entrustment[192] which was already shown to lend only questionable support to the supreme court's holding. *Wery* involved a parent's authorizing his minor son to operate an automobile in violation of a city ordinance.[193] Violation of the ordinance was considered negligence per se on the theory that the ordinance established a conclusive presumption that persons under the specified age were not qualified to operate an automobile.[194] *Wery* would seem to apply in this case because the Cordell children may have violated a statute.[195] However, as Justice Holmes pointed out in his dissenting opinion, there was no evidence in the record that the Cordell "parents knew or should have known that their children were going to buy beer for the group - or even that they knew their children were going to 'chip in' to buy the keg of beer."[196] As a result, it could not legitimately be said that the Cordell parents had consented to any statutory violation by their children. The *Bankert* case involved the interpretation of the coverage of an insurance policy as it applied to a minor's negligent operation of a motorcycle.[197] The only relevance that this case has to the aspect of consent is that the parents allowed the minor to ride the motorcycle.[198]

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187. 52 Ohio St. 3d at 218, 556 N.E.2d at 509.
188. *Id.* at 215, 556 N.E.2d at 507.
189. 136 Ohio St. 307, 25 N.E.2d 692 (1940).
190. 110 Wis. 2d 469, 329 N.W.2d 150 (1983).
191. *Huston*, 52 Ohio St. 3d at 218, 556 N.E.2d at 509.
192. *See supra* text accompanying notes 72-77.
193. 136 Ohio St. at 307, 25 N.E.2d 692.
194. *Id.* at 310, 25 N.E.2d at 694.
195. *See supra* text accompanying notes 163-64.
196. 52 Ohio St. 3d at 219, 556 N.E.2d at 510-11 (Holmes, J., dissenting).
197. 110 Wis. 2d 469, 329 N.W.2d 150 (1983).
198. *Id.* The *Bankert* court did not address the consent exception but merely discussed neg-

In support of the consent, direct or sanction theory, the court in *Huston* also cited *Southern American Fire Ins. Co. v. Maxwell*.[199] The facts of *Maxwell* are not even remotely similar to those in *Huston*. In *Maxwell*, the parents were found to have failed to use due care in determining whether their child was competent to control a bicycle without supervision.[200] Unlike *Huston*, the child in *Maxwell* was only five years old and directly caused the resulting injury.[201] Additionally, the *Maxwell* court did not expressly rely on the consent exception; the court actually relied on the broad approach to failure to control, stating that liability is "to be determined on the broad basis of whether the parent was guilty of negligence."[202]

The *Huston* court thus attempted to justify its conclusion by providing a broad base of parental liability founded upon both of the negligence exceptions and also the consent exception. But, in doing so, the court failed to support its finding with logical analogies or, in some instances, even cases which strengthened its general propositions. The *Huston* court, therefore, essentially ignored the long established legal custom of reasoning by analogy.[203] The cases which are the most factually similar to *Huston* are those involving varying approaches to social host liability,[204] but the court expressly declined to adopt any form of this theory.[205] Because of the questionable source of Bodnar's intoxication, a more legitimate approach would have been for the supreme court to expressly adopt the expansion of social host liability recognized in *MacLeary v. Hines*[206] in order to extend liability to the Cordell chil-

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ligent entrustment and failure to control. *Id.* at 471-73, 329 N.W.2d at 152-54.

199. 274 So. 2d 579, 580 (Fla. App. 1973).

200. *Id.* at 580.

201. *Id.* at 580-81.

202. *Id.* at 581. The consent exception does not rely on negligence principles. *See supra* text accompanying notes 89-95.

203. G. POSTEMA, BENTHAM AND THE COMMON LAW TRADITION § 1.3 (1986).

204. *See supra* text accompanying notes 150-60.

205. *Huston*, 52 Ohio St. 3d at 218, 556 N.E.2d at 509.

206. 817 F.2d 1081 (3d Cir. 1987). Instead, the *Huston* court relied upon an alternative liability theory to shift the burden of proof to the defendants to show that the alcohol they "furnished" was not the proximate cause of Huston's injuries. 52 Ohio St. 3d at 218-19, 556 N.E.2d at 510. The court found that in order to avoid summary judgment under this theory, the Hustons had to demonstrate "that the beer furnished to underage persons came from the Cordells, Goodsite or the other named defendants, and . . . that Huston was injured as a proximate result of the wrongdoing of at least one of the[] defendants." *Id.* at 219, 556 N.E.2d at 510. The dissent concluded that the Hustons had not produced sufficient evidence to show proximate cause and also declined to shift the burden of proof, preferring to require the Hustons to eliminate other possible sources of Bodnar's intoxication. *Id.* at 220, 556 N.E.2d at 511.

dren.[207] For the Cordell children to be found liable under this approach, a jury must determine that their conduct substantially aided Bodnar's and Huston's consumption of alcohol and that they knew that Bodnar would operate an automobile on the highway while intoxicated.[208] Once the childrens' liability was established, the court could have relied solely upon a theory of failure to control to extend liability to the Cordell parents by citing a factually similar persuasive precedent such as *Morella v. Machu*.[209] This approach would have at least avoided the lack of evidence demonstrating an authorization by the Cordell parents to their children to furnish other minors with alcohol.[210]

The results under either approach would be essentially the same. The practical effect is to extend liability beyond the social host doctrine to parents who do not even intentionally aid minors in their consumption of alcohol.[211] Therefore, the *Huston* decision may ultimately have a far-reaching effect upon the court's traditional avoidance of a broad approach to social host liability and may also increase parental responsibility to an unmanageable level.

V. CONCLUSION

In order to compensate victims of childrens' torts and to provide incentive for parents to exercise adequate authority, both the courts and state legislatures have made limited intrusions into the traditional common law rule of parental non-liability. The courts have achieved this by employing principles which impute liability to parents, hold parents responsible for their own negligent acts, or rely on parental participation in the childrens' conduct. The legislatures of all fifty states have adopted various forms of parental liability statutes which make parents vicariously liable for their childrens' wrongful acts. Ohio has consistently applied these same methods to establish parental liability. However, Ohio courts have been much more reluctant to recognize exceptions to the common law rule of non-liability of social providers of alcohol. Ohio courts have essentially limited liability of social hosts to those who furnish alcohol in violation of legislative enactments. In *Huston v. Konieczny*, the Ohio Supreme Court remained faithful to these

207. Under this approach, it would still be necessary for the Hustons to show that Bodnar had consumed beer from the keg in order to extend liability to Goodsite.

208. *MacLeary*, 817 F.2d at 1085.

209. 235 N.J. Super. 604, 563 A.2d 881 (1989). The *Morella* court employed the broad negligence approach of failure to control. *Id.* at 610, 563 A.2d at 884; *see also supra* text accompanying notes 152-55.

210. *See* 52 Ohio St. 3d at 219, 556 N.E.2d at 511. (Holmes, J. dissenting).

211. *Id.*

principles, expanding social host liability to include minors who provide other minors with alcohol in violation of a statute and extending parental liability under three of the common law exceptions. In order to achieve this result, however, the court ignored social host cases on point and relied on parental liability cases with dissimilar facts which did not always support the court's broad propositions. It remains to be seen what actual effect the *Huston* decision may have; however, the generalized language employed in the court's opinion may result in a dramatic increase in both social host and parental liability in Ohio.

David A. Reesman

APPENDIX
STATES' PARENTAL CIVIL
LIABILITY STATUTES

	AGE LIM.	MENTAL ST.	PR. DAM.	PER. INJ.	DAM. LIM.
ALA. CODE § 6-5-380 (1975)	18	INT/M/W	YES	NO	500
ALASKA STAT. § 34.50.020 (1985)	18	M/W	YES	NO	2000
ARIZ. REV. STAT. ANN. § 12-661 (1956 & Supp. 1982)	MINOR	M/W	YES	YES	2500
ARK. STAT. ANN. § 9-25-102 (Supp. 1989)	18	M/W	YES	NO	5000
CAL. CIV. CODE § 1714.1 (West 1985)	MINOR	M/W	YES	YES	10000
COLO. REV. STAT. § 13-21-107 (1987)	18	M/W	YES	YES	3500
CONN. GEN. STAT. ANN. § 62-572 (West Supp. 1990)	MINOR	M/W	YES	YES	3000
DEL. CODE ANN. tit. 10 § 3922 (Michie Supp. 1988)	18	INT/R	YES	NO	5000
FLA. STAT. § 741.24 (West Supp. 1990)	18	M/W	YES	NO	DAM.
GA. CODE ANN. § 51-2-3 (Supp. 1990)	18	M/W	YES	NO	5000
HAWAII REV. STAT. § 577-3 (1985)	MINOR	*	TORTS	TORTS	NONE
IDAHO CODE § 6-210	18	W	YES	NO	2500
ILL. ANN. STAT. ch. 70 § 53-57 (Smith-Hurd 1988)	11-19	M/W	YES	YES	1000
IND. CODE ANN. § 34-4-31-1 (West 1983 & Supp. 1990)	18	INT/R	YES	NO	3000
IOWA CODE ANN. § 613.16 (West Supp. 1990)	18	UN	YES	YES	1000
KAN. STAT. ANN. § 38-120 (1986)	18	M/W	YES	YES	1000
KY. REV. STAT. ANN. § 405.025 (Baldwin Supp. 1990)	MINOR	W	YES	NO	10000
LA. CIV. CODE ANN. art. 2318 (West 1990)	MINOR	*	YES	DAM.	NONE
ME. REV. STAT. ANN. tit. 19, § 217 (West 1981)	7-17	M/W	YES	YES	800
MD. CTS. & JUD. PROC. CODE ANN. § 3-829 (Michie 1989)	CHILD	DEL	YES	YES	5000
MASS. GEN. LAWS ANN. ch. 231 § 85G (West Supp. 1990)	7-18	W	YES	YES	5000
MICH. COMP. LAWS ANN. § 600.2913 (West 1986)	MINOR	M/W	YES	NO	2500
MINN. STAT. ANN. § 540.18 (West 1988)	18	M/W	YES	YES	500
MISS. CODE ANN. § 93-13-2 (Supp. 1989)	10-18	M/W	YES	NO	2000
MO. ANN. STAT. § 537.045 (Vernon 1988)	18	INT	YES	YES	2000
MONT. CODE ANN. § 40-6-237 (1989)	18	M/W	YES	NO	25000
NEB. REV. STAT. § 43-801 (1988)	MINOR	INT/W	YES	YES	1000
NEV. REV. STAT. § 41.470 (Michie 1986)	MINOR	W	YES	YES	10000

N.H. REV. STAT. ANN. § 592-A:16 (1986)	MINOR	*	YES	YES	FINE
N.J. STAT. ANN. § 2A:53A-15 (West 1987)	18	UN/M/W	YES	NO	NONE
N.M. STAT. ANN. § 32-1-46 (Michie 1989)	CHILD	M/W	YES	NO	4000
N.Y. GEN. MUN. LAW § 78-a (West 1986)	10-18	UN/M/W	YES	NO	2500
N.C. GEN. STAT. § 1-538.1 (Michie 1983)	MINOR	M/W	YES	YES	1000
N.D. CENT. CODE § 32-03-39 (Allen 1976)	MINOR	M/W	YES	NO	1000
OHIO REV. CODE ANN. §§ 3109.09 & 3109.10 (Anderson 1989)	18	M/W	YES	YES	3000
OKLA. STAT. tit. 23 § 10 (West 1987)	18	CR/DEL	YES	YES	2500
OR. REV. STAT. ANN. § 30.765 (1987)	MINOR	INT	YES	YES	5000
PA. STAT. ANN. tit. 11 §§ 2001-2005 (Purdon Supp. 1990)	18	W	YES	YES	1000
R.I. GEN. LAWS ANN. § 9-1-3(1984)	MINOR	M/W	YES	YES	1500
S.C. CODE ANN. § 20-7-340 (1985)	17	INT/M	YES	NO	1000
S.D. CODIFIED LAWS ANN. § 25-5-15 (1984)	18	M/W	YES	YES	750
TENN. CODE ANN. §§ 37-10-101, -102, -103 (Michie 1984 & Supp. 1990)	18	M/W	YES	YES	10000
TEX. FAM. CODE ANN. §§ 33.01, -.02 (West 1986)	12-18	N/M/W	YES	NO	15000
UTAH CODE ANN. §§ 78-11-20, -21 (Michie 1987)	MINOR	INT/R	YES	NO	1000
VT. STAT. ANN. tit. 15 § 901 (1989)	17	M/W	YES	YES	250
VA. CODE §§ 8.01-43, -44 (Michie Supp. 1990)	MINOR	M/W	YES	NO	750
WASH. REV. CODE ANN. § 4.24.190 (West 1988)	18	M/W	YES	YES	3000
W. VA. CODE § 55-7A-2 (Michie Supp. 1990)	MINOR	CR/M/W	YES	YES	2500
WIS. STAT. ANN. § 895.035 (West 1983 & Supp. 1989)	MINOR	M/W	YES	YES	2500
WYO. STAT. § 14-2-203 (Michie 1986)	10-17	M/W	YES	NO	300

MENTAL ST. - state of mind of the minor tortfeasor at the time of the act.
CR- criminal; INT- intentional; M- malicious; W- willful; T- tortious; N- negligent; DEL- delinquent; R- reckless; *- statute does not mention state of mind
AGE LIMIT - limits on age of minor tortfeasor
PR.DAM. - property damage covered by legislation
PER. INJ. - personal injury covered by legislation
DAM.LIM. - maximum damages recoverable from parents of minor tortfeasor.
NONE - no specified limit; FINE- parents must pay prescribed fine; DAM - actual damages.