BACE LAW REPORT

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Serve Guests Alcohol, and Control Their Supply at Your Own Risk: Social Host Liability

According to the Nielsen Company, the Fourth of July is the leading day of the year for beer sales across the country; Independence day ranks above the Super Bowl, Memorial Day, and New Year's Eve. Most of the 23 million cases of beer purchased during the weekend will be imbibed at private residences, and served by homeowners to their guests. As a result, the day is touted as one of the most dangerous days of the year to get behind the wheel of a car. Unfortunately, along with the joy associated with parades, family togetherness, and the celebration of freedom and independence, are some grim realities. There are few scenarios in which a homeowner voluntarily exposes herself to more liability than by hosting the Fourth of July barbecue. It appears counterintuitive, but personally **serving** the alcohol, and **controlling** the supply to guests, will actually increase a host's exposure to liability.

As discussed in the May issue of this newsletter, generally, the area of premises liability is operative in the event someone is injured at an owner's property. A landowner owes a common-law duty of "reasonable care" to all persons lawfully on the premises. This means landowners are legally obligated to *maintain the property in a reasonably safe condition*. Mounsey v. Ellard, 363 Mass. 693, 708 (1978). Overly simplified, civil liability for accidents can attach, wherever the responsible party fails to act as a reasonably prudent individual, and another is injured as a result.

However, the situation is quickly complicated with the addition of intoxicating substances supplied to guests by the host or

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landowner. The realm of "social host liability" is primarily caselaw which attempts to delineate when, and to what extent, homeowners are responsible for the drunken actions of their guests.

The riskiest behavior, obviously, occurs when a partygoer is served by a host and then operates a vehicle. The dangers associated with driving under the influence cannot be overstated, but are not the focus of this newsletter.

Furnishing Alcohol to Minors

With respect to underage drinkers, the law is particularly clear. It is illegal, explicitly by state statute, to furnish alcohol to an underage individual (M.G.L. Chapter 138 § 34). The statute imposes *criminal* liability to anyone who furnishes or supplies alcohol to a minor. Violation of the statute also gives rise to a *civil* claim in the event that a minor is injured as a result of being furnished alcohol. Knowingly furnishing alcohol to a minor who the homeowner knows will be driving is considered *negligence per se,* and the homeowner can be held liable for injuries to the minor or third-persons thereafter. Longstreth v. Gensel, 423 Mich. 675, 694--695 (1985).

Furnishing Alcohol to Adults

One may argue that adults ought to be responsible for their own actions. The independent choice of a guest to drink an excess of alcohol, and then either cause an auto accident, or fall off a deck, ought not result in civil liability directed to the host - the Law of the Commonwealth disagrees.

The courts recognize a social host's liability to a person injured by the actions of an intoxicated guest where:

1) the host knew or should have known that his guest was drunk; and,

2) nevertheless, the host permitted the guest to take an alcoholic drink; and,

3) the guest knew or should have known the guest *might* operate a vehicle. McGuiggan v. New England Telephone, 398 Mass. 152 (1986).

No liability can apply where the host does *not* supply the alcohol, and simply provides a social venue for drinking. Such bring your own beer "BYOB" scenarios, where the host neither supplies, nor serves the alcohol will likely limit

the host's exposure to liability for the acts of drunken guests. Ulwick v. DeChristopher, 411 Mass. 401, 406 (1991). The relevant inquiry is whether or not the host had "control" over the guest's supply of alcohol. Whether the supply is a keg purchased by the host, a cooler furnished by another guest, or otherwise, will complicate any inquiry as to control, and likely complicate whether or not a social host will be held liable.

Determining a social host's liability for injuries caused by an intoxicated guest is a balancing act. The courts take care not to challenge or regulate such a wide array of social interactions. This newsletter is not intended to give the impression that a social host must control the actions of each and every guest. To the contrary, there is recent caselaw that states if one injures *herself* as a result of excess drinking, then the host will not be liable for that individual's injuries. Sampson v. MacDougall, 60 Mass. App. Ct. 394, (2004). However, the courts do recognize scenarios in which liability can attach to a Fourth of July host. The following is a list, not intended to be complete, of reasonable actions which may limit exposure for a barbecue host:

- Do not furnish alcohol to minors;
- Do not "serve" guests, but allow guests to independently monitor their intake of alcohol;
- Serve water, soda, and coffee instead of, or in addition to, alcoholic beverages;
- Provide only a reasonable supply of alcohol based on the number of anticipated guests;
- Avoid large kegs, or encourage guests to bring their own beverages "BYOB" to the gathering;
- Invite guests to stay overnight, or provide information regarding taxi services.
- In the event a guest appears intoxicated, immediately act in order to prevent an accident.