

# Social Host Liability: Risks for Fraternities and Student Hosts

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*The author examines social host liability doctrines as interpreted by the courts and discusses them in relation to the college and university. Based on a study of campus fraternity chapters, their attitudes and knowledge about social host liability, and their methods of addressing this possible problem, the author suggests ways that university administrators can assist in preventing these cases.*

Social host liability is a legal doctrine that may impose liability on private hosts for serving alcohol to party guests who are afterwards involved in an alcohol-related accident. Recognition of this judicial doctrine departs from the long-established common law rule that held only the consumers, not the purveyors, of alcohol accountable for alcohol-related conduct and for any injuries to others that resulted from it (e.g., *Cole v. Rush*, 1955; *Cruse v. Aden*, 1889). This expansion of judicial acceptance of social host liability may reflect the nation's escalating concern about alcoholism and drunken driving accidents (Connell, 1985), the courts' willingness to take a tougher position on alcohol consumption and its associated problems, and the belief that holding hosts liable will help deter alcohol abuse and drunken driving (Weiner, 1985).

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Although several jurisdictions have not yet considered social host liability and others have declined to assign responsibility for serving alcohol to visibly intoxicated adult guests (e.g., *Burkhart v. Harrod*, 1988; *Klein v. Raysinger*, 1983), only a few have rejected private host liability in cases where alcohol provided to minors resulted in injuries to third parties (e.g., *Bankston v. Brennan*, 1987; *Bass v. Pratt*, 1986). Indeed, the majority of states hold private hosts as well as commercial liquor vendors liable for serving alcohol to minor guests and for any resultant injuries to third parties (Tish & Ream, 1985). Such liability, for example, has been imposed on hosts for serving intoxicants to minors at employer-sponsored office parties (*Congini v. Portersville Valve Co.*, 1983) and at private in-home parties (*Koback v. Crook*, 1985).

Since the early 1970s, some of the harshest social host liability decisions have been handed down against fraternities that act as party hosts on college and university campuses (*Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, 1971; Zirkel, 1990). In a leading case, *Fassett v. Delta Kappa Epsilon* (1986), the U.S. Court of Appeals for the Third Circuit sanctioned the lower court's decision that all members of a fraternity chapter may be held liable as "accomplices" for promoting a fraternity party at an off-campus site. This decision enormously extended the range of host liability by defining an accomplice host as one who, in any way, cooperatively promotes or sponsors a party at which alcohol is consumed, even if he or she does not directly serve or furnish alcohol to guests. In other fraternity-host litigation (e.g., *Alumni Association v. Sullivan*, 1987; *Jefferis v. Pennsylvania*, 1988), Pennsylvania Superior courts have confirmed the *Fassett* ruling.

Accomplice liability has, thus, been enlarged so that one who merely offers "substantial assistance" in furnishing alcohol or in promoting its consumption at a party may be held accountable as a host-accomplice. So, although these fraternity-related host liability cases need not be accepted by all legal jurisdictions, they could be cited as precedent and, therefore, establish a plausible risk for fraternities, sororities, and any other student organization that hosts or promotes a social event at which alcohol is consumed.

In spite of the expanded reach of the social host liability doctrine, national fraternity foundations and colleges and universities have generally remained insulated from its risks (Burke, 1990). Although named as defendants in alcohol-related litigation, courts have consistently declined to hold them liable on the ground that neither national fraternity foundations nor colleges control the day-to-day activities of students and thus

do not function as hosts or accomplice hosts for campus parties (e.g., *Moyer v. Lehigh University*, 1990; *Beach v. University of Utah*, 1986). It is well-established that colleges no longer stand *in loco parentis* to students and do not have a legal duty to act as custodians of students' social conduct (e.g., *Bradshaw v. Rawlings*, 1979, 1980; *Campbell v. Board of Trustees of Wabash College*, 1986).

## Method

The objective of this study was to survey campus fraternity chapters to explore fraternity members' attitudes and knowledge about social host liability and to examine the ways, if any, in which fraternities address this possible liability. Fraternities were selected as subjects because, based on current legal precedent, campus fraternity chapters are more susceptible to liability under the social host doctrine than are other types of campus organizations.

During spring semester of 1992, written survey questionnaires were mailed to the student presidents of InterFraternity Council (IFC) organizations at those Pennsylvania colleges and universities having fraternity systems composed of five or more nationally affiliated campus fraternity chapters ( $n=43$ ). The IFC presidents distributed the survey questionnaires to student IFC representatives for the nationally affiliated campus fraternity chapters ( $n=441$ ). Forty-four percent of the colleges and universities contacted participated in the study, and of those there was a 29% response rate from nationally-affiliated campus fraternity chapters. Respondents' confidentiality was assured.

The survey solicited information about (a) whether the campus fraternity chapter members were aware of the social host liability doctrine, (b) whether the members' knowledge about the doctrine was adequate, and (c) what the primary source of fraternity members' knowledge about social host liability was. The survey also questioned whether each respondents' national fraternity foundation (d) had an alcohol risk management program, and whether the campus chapter had (e) a risk management officer and (f) liability insurance to cover alcohol-related accidents. The questionnaire collected information about whether the fraternity had developed systems for (g) identifying minor guests at fraternity-hosted parties and (h) refusing to serve alcohol to obviously intoxicated guests. Also, the survey explored whether the fraternity provided a (i) safe transportation system to escort intoxicated guests leaving a party.

## Results

Survey results indicate that the majority of the fraternity chapter respondents (75%) are aware of the potential risks of social host liability, but 25% are not familiar with the legal doctrine. A slightly smaller majority of the respondents (65%) believe that fraternity chapter members are adequately informed about social host liability, while approximately one-third (35%) believe that members are not adequately informed. Forty percent (40%) of the respondents learned about social host liability primarily from their national fraternity foundation, while a small number of the respondents learned about the doctrine primarily from the IFC (6%) or from the college or university (3%); more than one-half (51%) obtained information about host liability from other sources, including fraternity brothers and friends. The majority of the fraternities (90%) report that their national foundation affiliates have an alcohol risk management program and 48% of the chapters responding have a risk management officer. Forty-seven percent of the fraternities have liability insurance for alcohol-related accidents; 36% do not; 17% of the respondents do not know whether their chapter has such insurance.

The majority of the respondents (61%) have a system for identifying minor guests at fraternity parties, and 72% of the fraternity chapters have a policy of refusing to continue to serve or provide alcohol to obviously intoxicated party guests. Among the respondents that have such a system, the decision to refuse alcohol service to a guest is made by the chapter's president (15%), social chair (6%), or by party bartenders or servers (26%); 41% of the fraternities responding permit any chapter member to enforce the alcohol refusal policy.

Twenty-seven percent of the fraternities have no system for providing safe transportation for intoxicated guests leaving a party; 26% provide a designated driver to escort intoxicated guests safely home; 10 percent maintain a car key-check system at parties. Ten percent (10%) of the chapters use a college provided escort service for intoxicated party guests, 4% use public taxis, and 27% offer some other means of safe transportation, such as having a chapter member walk an intoxicated guest safely home.

## Conclusions and Recommendations

Although a majority of fraternities are aware of the dangers of social host liability, a substantial percentage remain unaware or are inadequately informed about the risks. Many fraternities receive liability information from their national foundations and thus may be better informed about social host liability than other campus organizations that are also potentially vulnerable to the risks of acting as party hosts. Because a significant portion of the social host liability litigation has been decided in Pennsylvania courts, fraternity members at Pennsylvania colleges may be more cognizant of the risks of host liability than other fraternities. In view of the significant threat of host liability, fraternities and other student organizations must be sufficiently advised about the doctrine.

Because approximately one-third of the fraternity chapters learn about social host liability primarily from sources other than their national foundations or colleges and universities, it is difficult to assess whether they receive accurate information. Moreover, even a fraternity that is generally aware of the risks of providing alcoholic beverages to guests could be misinformed about alcohol liability. National fraternities, IFC groups, and colleges should assume greater responsibility for communicating social host liability information to fraternities and other student organizations to make certain that students have accurate information about potential liabilities. In addition, risk management and alcohol liability insurance programs established by national fraternity foundations should be more extensively implemented at the campus level to educate and protect the student groups from social host liability.

Case law precedent (e.g., *Koback v. Crook*, 1985) suggests that social host liability may be diminished where hosts refuse to serve minor guests and already-intoxicated adult guests, and where hosts offer safe transportation for intoxicated guests following a party. Many fraternity chapters have neither established procedures for refusing to serve minor guests or already intoxicated guests nor developed a safe transportation plan; such chapters consequently have not limited their liability. Even fraternities that have established such systems may enforce them in a somewhat ad hoc manner, and this may not be adequate to limit liability.

Given the widespread use of alcohol by college students (Gregory, 1985) and the knowledge that students are likely to be misinformed or inadequately informed about the seriousness of the threat of social host liability, colleges have a professional obligation to educate students about

these issues. They may even have a legal responsibility to assist students in minimizing the dangers of social host liability and drunk driving. Although courts have frequently held that colleges do not have a special relationship with students that creates a legal duty to control their social behavior (e.g., *Bradshaw v. Rawlings*, 1979, 1980), many authorities advocate that colleges should affirmatively act to reduce high-risk drinking activities (Roth, 1986). Given the relative immunity of national fraternity foundations and colleges to alcohol-related liability (e.g., *Rabel v. Illinois Wesleyan University*, 1987), colleges can safely coordinate and supervise alcohol and social host liability education programs. In fact, the sponsorship of such programs may reduce a college's exposure to charges of non-feasance, or negligence, for failure to act to protect students from a known, foreseeable danger (Richmond, 1990). In order to fulfill professional and, possibly, legal responsibilities, colleges should establish alcohol education programs that include some of the following components: (a) a written alcohol policy distributed to students in the student handbook or similar publication; (b) informational seminars for all students (but with special programs for first-year students) about drunk driving and local liquor control statutes; (c) seminars about social host liability; (d) workshops to train party servers, instruct student-hosts to identify intoxicated party guests, teach student-hosts to properly refuse service to intoxicated guests, and provide advice on developing and implementing safe transportation systems for guests; (e) a health oriented class about alcoholism and mature drinking; (f) an annual "alcohol awareness" month that includes events tailored to meet the particular needs of the student population; (g) a college sponsored safe transportation program that provides vans and security escorts who can accompany students safely home from student-hosted social events; (h) a written statement describing possible judicial procedures that may result from alcohol policy violations; and (i) alcohol counseling programs.

Legal experts and alcohol substance abuse professionals should be engaged to speak and to conduct programs that ensure that accurate information is communicated to students. If feasible and appropriate, colleges, national fraternities, and representatives of other national student organizations should cooperatively develop preventive education programs. Such collaborative efforts would open channels of communication between colleges and the national associations and, perhaps, allow for program cost-sharing.

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