To understand “social host” liability you need to go back to the development of commercial host liability. Facts are key, and we’re closing in. 2 types of cases:

1. Intoxicated person leaves and injures themselves

2. Intoxicated person leaves and injures an innocent third party

So far as the tavern’s liability is concerned, there is no difference (just a reduction for contributory negligence, if applicable)

**“Intoxication” versus “Impairment”**

* “Science” versus “Behaviour”
* In some situations, we care about intoxication (i.e. BAC)
* In others, we care about impairment (whether the person is acting drunk)
* Lawyers and judges get this wrong all the time – pay attention to which one you need to be concerned about!

**Commercial Host Liability**

Jordan House [1974 – Supreme Court of Canada] – the first time we have a case where a bar is found liable for injuries sustained off-premises. A well-known patron became intoxicated at the licensed premises after spending several hours there drinking beer. He was ejected:

* Owner knew that Menow was intoxicated, knew that he would have to walk home, and knew he was drunk to the point that he would be unable to take care of himself
* Menow decided that the straightest line home was to walk down the centre line of the highway
* Liability was apportioned 1/3 each between the bar, driver, and Menow

Tavern Liability Because:

* “inviter-invitee” relationship
* Knowledge of Menow’s “propensity to drink”
* Standing instructions to staff not to serve Menow unless he was with a responsible adult
* Statutory obligations not to serve someone who is apparently intoxicated

Tavern had a duty to see that Menow got home safely by:

* 1. Putting him under the charge of a reasonable person;
  2. Putting him into a taxi;
  3. Not letting him leave until he was in a “reasonably fit condition”

Hague v. Billings (1993 – ONCA)

* On October 28, 1983, commencing at 9:30 a.m., Billings and two friends consumed a total of 50 pints of beer, a 26-ounce bottle of Whisky, and smoked “a substantial amount” of marijuana. At approximately 10:45 p.m., Billings crossed the centre line and collided head-on with a vehicle, killing one of those passengers and injuring the other two. His BAC at the time of the accident was backed out to .288

Background Facts:

* At approximately 7:15 p.m., Billings and his cohort attended the Oasis Tavern. They were served one beer then were cut-off. The owner tried to get Billings to hand over his keys, or give the keys to one of the others (who appeared more sober). Billings refused, they left, and they drove to the Ship and Shore Hotel. Billings and crew remained at Ship and Shore Hotel from 9:00-10:30 p.m., during which time Billings was served a further 3-4 beers. When they left, his driving was so erratic that his two friends forced him to pull over and let them out. Billings admitted liability. The issue for trial was the liability of each tavern.
* Oasis Tavern (the first one) was not liable. Billings’ intoxication was not apparent at the time he was served that single beer, and when it became apparent, Oasis correctly cut him off and tried to dissuade him from driving. Trial judge found that Oasis should have called the police. But, trial judge also found that there was no evidence that this would have prevented the accident from occurring, and therefore, Oasis is off the hook (barely).

Other facts:

* Ship and Shore is located at the side of a major highway. Virtually all patrons arrive and depart via car
* S&S staff failed to observe his obviously intoxicated condition (or worse, ignored it)
* “Purpose of putting the tavern at the side of the highway, with bright signs, is to entice drivers to stop for a drink”
* There is a “special relationship” between for-profit taverns and the general public

Ship and Shore was found 50% liable two ways:

* Statutory (Liquor License Act)
* Common Law (serving alcohol to an obviously intoxicated patron, increasing his risk to others)

Several grounds of appeal by Ship and Shore, but two interesting ones:

* Billings was so drunk by the time he arrived, those last 3-4 beers were irrelevant
  + ONCA found the statutory obligation to be a “strict liability” offence, making the common-law analysis moot
* Apportionment of liability
  + Was adjusted to 85% (Billings) and 15% (Ship and Shore)

Stewart v. Pettie (1995 – Supreme Court of Canada)

4 people attended a restaurant. 2 were drinking; 2 were not. Single vehicle MVA with serious injuries to a passenger.

Restaurant was found liable by the trial judge and by ONCA. SCC set this aside

Neither of the “drinkers” appeared visibly intoxicated, although the amount of consumption was known by the server (same server all night), and in fact, the driver’s BAC was about .200

SCC found that bars have a duty of care to third parties, because the risk of an injury arising from drinking and driving is “real and foreseeable”

Did the restaurant meet the standard of care?

* No liability from the “mere fact” that Pettie may have been over-served
* Over-imbibing, by itself, does not create risk to third-parties
* SCC refused to find civil liability simply because there may have been a statutory breach (*Saskatchewan Wheat Pool* case)
* The group arrived together, spent the night together, and left together. It was reasonable for the restaurant to assume that one of the sober people (remember the phrase “responsible person”) would drive away.
* It was not foreseeable that Pettie would drive in these circumstances
* Restaurant had no duty to take further steps (i.e. making inquiries, having a conversation)

**Social Host Liability**

Childs v. Desormeaux

* Head on collision, child in the other car is rendered a paraplegic. Defendant’s BAC was 235 when he left the party

Facts

* BYOB house party on NYE. Only alcohol served by the hosts was a tiny bit of champagne at midnight. Defendant was a known “heavy drinker”. When he left, one of the hosts asked him if he was okay to drive. He said he was, and that was the end of the discussion.
* The trial judge found the hosts liable because of the defendant’s *past* drinking and driving behavior. SCC overruled this.
* SCC found that the hosts did not know that the Defendant was intoxicated when he left

Is there a positive obligation on the hosts to do something to prevent the harm? 3 prior situations where this arises:

1. Hosts invite guests to an inherently dangerous activity
2. Paternalistic relationships of supervision and control (based on vulnerability of the plaintiffs)
3. Defendants who have a commercial enterprise with implied responsibilities to the public at large (commercial taverns)

None of these apply to a private party. Law does not impose a duty to eliminate risk, and people have the right to choose to engage in risky activities.

* Holding a house party where alcohol is served is not an inherently risky activity. Guests may choose to partake in risky activities, but the act of holding the party itself does not fall into the prior categories
* Party hosts do not have a paternalistic relationship (i.e. enhanced duty) to their guests
* Private hosts are not acting in a public capacity

SCC in *Childs* compared commercial and social hosts:

Commercial:

* Easy (and expected) for commercial hosts to monitor consumption
* Regulation and training for commercial servers creates special knowledge about signs of intoxication
* Regulations addressing the commercial sale of alcohol, targeted at those who profit from the sale of alcohol
* Over-consumption is more profitable than responsible consumption
  + costs are borne by the patron, by taxpayers, and by third parties
  + But profits are entirely those of the tavern

Private**:**

* No institutional method of monitoring consumption
* No contractual relationship with guests

Bottom Line from Childs:

* Hosting a party and creating a space for people to consume alcohol does not create sufficient risk to impose a duty towards members of the public
* The guest remains responsible for his or her actions
* The guest “does not park his autonomy at the door”
* The social host is not expected to monitor guests’ consumption
* “A social host at a party where alcohol is served is not under a duty of care to members of the public who may be injured by a guest’s actions, unless the host’s conduct implicates him or her in the creation or exacerbation of the risk”.
* Appears to leave the door open for future cases, but is very vague

Childs appears to have made it nearly impossible to attach liability to a social host. But, the caselaw has been inching closer since. Facts!

Wardak v. Froom

* Motion for summary judgment brought by the homeowners

Facts:

* 18 year-old Plaintiff attended a house party to celebrate the 19th birthday of his close friend, Graeme. The Plaintiff lived down the street and walked to the party. The party was hosted by Graeme’s parents, who were both present and actively supervising throughout the night, and who knew that there would be (underage) alcohol consumption
* The party was strictly BYOB
* One of the festivities was Beer Pong
* The Plaintiff spent most of the evening in the basement. He was observed drinking, and accounts of his level of intoxication varied: “a bit drunk” to “quite intoxicated” to one person’s recollection of him being the most drunk person present
* Many different witness statements & affidavit evidence introduced
* Throughout the evening, the parents routinely checked in on the basement, and interacted with the Plaintiff throughout. They gave evidence at Discovery that they found him to be “coherent and sober” and “perfectly fine”
* Towards 11pm, Plaintiff interacted with the parents on his way home – Graeme’s father offered to walk the Plaintiff home – P declined, said he was fine, went to the bathroom, then went downstairs. “wobbling”, “odd behavior”
* Short while later, Plaintiff came back upstairs and headed for the front door. Dad didn’t think Plaintiff would even have been able to walk home. Plaintiff stomped and growled at him, then headed back into the washroom. Dad went off to do something else, and Plaintiff left. Graeme’s older sister saw Plaintiff leave: “completely zoned out” and “looked like he was going to be sick”.
* Sister happened to be heading out with her boyfriend – they cruised by Plaintiff’s house and saw the brake lights activated on his car. She stopped, got out, and tried to talk P out of driving. He refused – she called 911! They also tried to follow him in their own car (unsuccessfully). Meanwhile, Graeme’s dad went to Plaintiff's house, spoke with Plaintiff’s dad, who also set out to look for him

Plaintiff made it down the street before driving over a fire hydrant and hitting a tree. BAC of 274**.** Quadriplegic with severe brain injury

* SJ motion was dismissed. Triable facts, including:
* Plaintiff was an invited guest, not a distant third party (i.e. road user)
  + “possibly” a closer relationship
* The fact that they did not serve alcohol does not automatically insulate the defendants
* The homeowners knew that there would be (and was) underage drinking
* The homeowners were supervising throughout the night - (damned if you do; damned if you don’t?)
* Nothing done to stop P from drinking after he was observed to be “wobbly”
* Evidentiary issues / problems by both parties
* Full trial is needed

It appears that the case settled without a trial.

Sabourin v. McKeddie

* SJ Motion brought by homeowner

Facts:

* Single vehicle MVA. Plaintiff passenger was 16 years old. Defendant driver (Mark McKeddie) was 31 years old – from Alberta, visiting his family and staying at his father’s home. Other brother, Taylor McKeddie, was 19 years old. The vehicle was unplated, unlicensed, and uninsured - no wonder they were after the homeowner

Facts:

* Mark and Taylor drove to the beach. Plaintiff joined them there with two other friends. Each brother drank about 4 beers each. Plaintiff drank about 3. Back to the house.
* Dispute about whether Graham (father) was there when they arrived
* Graham: claimed that he spend the day with his girlfriend, they kids got home around 9pm, and went straight to the backyard (where Graham was not). He observed them a few times and didn’t see anything concerning. Eventually the kids got loud and he asked them to leave. He (of course) denies offering any alcohol to them at any time
* Plaintiff: they got to the home around 7pm; Graham was there already drinking beer in the backyard, and the group collectively sat around and drank until the beer was gone
* Undisputed fact: that night, the beer ran out, so the kids got in the car, drove across the border to Quebec, and resupplied
* On the way home, Mark lost control and crashed

Motion Judge found:

* The dispute about the version of events is irrelevant. Graham did not know the Plaintiff’s age, did not know there were underage drinkers present, did not provide alcohol to anyone, and did not know that excessive drinking was taking place. No one showed obvious signs of intoxication
* Eve of trial – significant time savings if homeowner is released

Williams v. Richard (ONCA)

Appeal of a successful SJ Motion by homeowner

Facts:

* Mark and Jake were adults and work friends. Jake lived with his mother, located about 500 meters from Mark’s home. They got together 3-4 times per week to drink at each other’s home. On DOL, they worked from 7am until 1pm. At about 4:30 p.m., Mark shows up at Jake’s house (his mother’s house) in a work van.
* Let the drinking commence!
* 3 hours, 15 cans of beer each
* “no debate” that Jake knew Mark was in no condition to drive
* They had a “pact” – call 911 if the other is about to drive while drunk
* Mark’s plan was to drive the work van home, then gather up the babysitter and his own kids in his personal car, to then drive the babysitter home. Mark then promised not to do this after Jake half-heartedly threatened to call the police. Not a particularly strong demand by Jake, and not a particularly believable promise by Mark.
* Jake may have mentioned this to his mother (inconsistent evidence about what she knew).
* Jake did nothing further to prevent Mark from driving.
* 10-30 minutes later, Jake and his mother drive to a store to buy cigarettes. They drove by Mark’s house, and his car was gone. At the store (and after learning that his brand of smokes wasn’t available) Jake used a payphone to call 911. They then carried on their mission to find the correct brand of smokes.

In the meantime, Mark had driven into the rear of a stopped tractor-trailer

* Mark was ejected and killed
* FLA claims

Focus on the homeowner, not the son (Jake):

ONCA overview of the law:

* Simply holding a house party where alcohol is served is not an invitation to participate in “risky activity”. More is required to establish risk.
* Main questions:
  + Whether the host knows the guest is intoxicated
  + Whether the host knows the guest plans to engage in a potentially dangerous activity
  + Whether that activity eventually results in harm
  + Is there “something more” to suggest that the host was inviting the guest into an inherently risky environment, or facts of a paternalistic relationship

“Foreseeability”

* Whether it was reasonably foreseeable that the guest would engage in certain acts and behaviours that subsequently led to an accident.

“Something More”

* Alcohol service versus BYOB
* Size and type of party
* Other risky behaviors such as underage drinking or drug use

“Spectrum”: BYOB, small size after-work dinner and drinks → “wild” Halloween party for 40 people, with some illegal drug use →House party thrown by a teenager for over 100 people, most of whom are underage, while the parents are out of town

The motions judge had found no evidence homeowner knew Mark was about to drive while impaired. Therefore, no trial was necessary.

Court of Appeal overturned this – they found conflicting evidence, and set aside the SJ dismissal – they found a genuine issue requiring a trial. Focused on the “pact”, and the established pattern of heavy drinking, together with her possible knowledge

Scary part for all of us: motions judge had found that any duty ended when Mark got to his own home safely. Court of Appeal overruled this: *“in a social host liability case, there is no automatic rule that the duty of care expires once the intoxicated driver arrives home safely”.*

***I think these are the facts that are going to lead to the first finding of social host liability. It seems wrong, but that’s the current state of the law. Perhaps the ONCA will back off this statement, or perhaps they will double-down and then we’re all potentially liable for an impaired guest safely getting home, then getting in their own car (entirely beyond our control) and causing injury to another person.***

Conclusion: there has not yet been a duty found by any Court. Very fact-specific, and there will likely be a case with the perfect set of “bad” facts that will create an outcome of social host liability. The comment from ONCA in Williams that the social host duty extends even after the impaired person arrives home sets the stage for social host liability in the right circumstances (whether that outcome is “right” or “wrong”).