CASE NOTES

TORTS—A Social Host Who Furnishes Intoxicants to an Intoxicated Guest May Be Civilly Liable Under Common-Law Principles for Damages Sustained by a Third Person as a Result of the Intoxicated Guest's Tortious Conduct.—*Clark v. Mincks* (Iowa 1985).*

William and Larry Mincks hosted a party at Larry Mincks' home, which began on the afternoon of October 1, 1982.[1] Nancy Mincks, a guest at the party, began drinking before she arrived, and apparently drank heavily while at the party.[2] It is alleged that the hosts served beer or other liquors to Nancy while she was already intoxicated.[3]

Evidence presented during trial revealed that Nancy was having difficulty standing up, and at one point spilled a drink on one of the hosts.[4] It was additionally found that at about midnight, Nancy and another guest at the party decided to take some children into town to play video games.[5] One car departed for town while Nancy urged others to get in her husband's van.[6]

Gale Bogle, an adult, climbed into the van, along with two boys.[7] Shirley Clark, another guest at the party, knew that Nancy was intoxicated and requested of Nancy's husband that Nancy not drive the van.[8] Clark also asked her husband to remove their son from the van.[9] Soon after this, the Clarks' daughter, Michelle, entered the van.[10] The van then left for town, with Nancy driving.[11]

After the van departed, the Clarks left for town in another vehicle.[12] On

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* EDITOR'S NOTE—During the publication process of this casenote, the Iowa Legislature abrogated this case. *See* S.F. 2265, 71st G.A. (1986).

1. Clark v. Mincks, 364 N.W.2d 226, 227 (Iowa 1985).
2. *Id.* at 228. Evidence was presented at trial that Nancy Mincks drank over ten twelve-ounce beers at the cookout. *Id.*
3. *Id.* at 227.
4. *Id.* at 228.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*

their way they came upon the wreckage of the van, and discovered that Nancy Mincks and their daughter had been killed.[13] As a result of their daughter's death, the Clarks brought an action at law against Robert Mincks and the estate of his deceased wife, Nancy.[14] The petition subsequently was amended to include three additional defendants: Gale Bogle, William Mincks, and Larry Mincks.[15]

The trial court sustained a motion by defendants William and Larry Mincks to dismiss the plaintiffs' petition for failure to state a claim.[16] The Iowa Supreme Court *held*, reversed and remanded to the district court for further proceedings.[17] A social host who furnishes intoxicants to an intoxicated guest may be civilly liable under common-law principles for damages sustained by a third person as a result of the intoxicated guest's tortious conduct. *Clark v. Mincks*, 364 N.W.2d 226 (Iowa 1985).

The plaintiffs based their common-law claim against the Minckses on a breach of a statutory duty.[18] They alleged that the Minckses continued to serve Nancy Mincks intoxicating beverages, knowing that she was already intoxicated,[19] in violation of section 123.49(1) of the Iowa Code.[20]

Justice Uhlenhopp, in finding the social host liable, primarily supported the majority's opinion as a result of the logical progression of three previous Iowa Supreme Court cases.[21] In *Cowman v. Hansen*,[22] the court established precedent in Iowa relating to the liability of furnishers of intoxicants.[23] The

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13. *Id.*

14. *Id.* at 227. The plaintiffs based their claim against Robert Mincks on the fact that he was the owner of the van. *Id.* The plaintiffs' claim against the estate of Nancy Mincks was based on the negligent operation of the van by Nancy. Brief for Appellants at 2, Clark v. Mincks, 364 N.W.2d 226 (Iowa 1985). These two claims were not appealed. Clark v. Mincks, 364 N.W.2d at 227.

15. Brief for Appellants at 1, Clark v. Mincks, 364 N.W.2d 226 (Iowa 1985).

16. *Id.* Defendant Bogle's motion for summary judgment was overruled. Clark v. Mincks, 364 N.W.2d at 232. The defendant Bogle's appeal was consolidated with that of plaintiffs against the Minckses. *Id.* at 227.

17. Clark v. Mincks, 364 N.W.2d at 232. As to the claim against the defendant Bogle, the court determined that, even as the only other adult besides Nancy Mincks in the van, Bogle owed no duty to Michelle Clark to protect her from the dangerous possibilities of an intoxicated driver. *Id.* at 231-32. As a result, the court reversed the trial court's overruling of Bogle's motion for summary judgment. *Id.* at 232.

18. Brief for Appellants at 3, Clark v. Mincks, 364 N.W.2d 226 (Iowa 1985).

19. *Id.*

20. This section presently reads: "No person shall sell, dispense, or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor or beer." IOWA CODE § 123.49(1) (1985).

21. Cowman v. Hansen, 250 Iowa 358, 92 N.W.2d 682 (1958); Lewis v. State, 256 N.W.2d 181 (Iowa 1977); Haafke v. Mitchell, 347 N.W.2d 381 (Iowa 1984). *See infra* notes 22-43 and accompanying text. All justices concurred in the decision, except for Justices McGiverin, Harris, Carter, and Wolle, who dissented in part and concurred in part. Clark v. Mincks, 364 N.W.2d 226, 232 (Iowa 1985).

22. 250 Iowa 358, 92 N.W.2d 682 (1958).

23. *Id.*

court in *Cowman* rejected a common-law claim against a tavern owner for furnishing beer to an intoxicated person, holding instead that consumption was the proximate cause of the plaintiff's injury, not the defendant's furnishing of the beer.[24]

The defendant in *Cowman* was a tavern owner who furnished beer to a patron to the point of intoxication.[25] A passenger in the patron's car was killed when the patron was involved in an automobile accident after leaving the defendant's establishment.[26] In refusing to find the tavern owner liable under common-law principles, the court held that the furnishing of the beer was too remote to establish that it was the proximate cause of the plaintiff's injury.[27]

The reasoning in *Cowman* was effectively overruled by the subsequent Iowa Supreme Court case of *Lewis v. State*.[28] In *Lewis*, the plaintiffs were injured when their automobile was struck by another automobile that crossed the median of Interstate 29 in Sioux City, Iowa.[29] They alleged that the other driver, under the legal drinking age at that time, was intoxicated due to the negligent and wrongful sale to him by a state liquor store employee in violation of section 123.43 of the Iowa Code.[30]

The defendant State of Iowa argued that the liquor store employee was a member of the Iowa Liquor Control Commission, and thus, the state was not amenable to suit for any wrongs that may have been committed by him, pursuant to the immunity granted in section 123.13 of the Iowa Code.[31] The

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24. *Id.* at 373, 92 N.W.2d at 690. Besides the common-law claim, the plaintiffs in *Cowman* also sought relief based on dram shop liability. *Id.* at 360, 92 N.W.2d at 683. The dram shop claims were dismissed because the beer furnished by the defendant was not an "intoxicating liquor" by legislative definition. *Id.* at 362-65, 92 N.W.2d at 684-86.

25. *Id.* at 360, 92 N.W.2d at 683.

26. *Id.*

27. *Id.* at 373, 92 N.W.2d at 690. The court stated:

> We are satisfied that a natural result of such a sale or gift of legal beer was not that the vendee would depart, drive a car, operate it in a negligent or reckless manner and thereby injure or kill someone. We must, therefore, hold that furnishing legal beer to [the driver] was too remote to be held a proximate cause of the injury or damage. Extension of civil rights to cover such cases must be by action of the legislature, which has well and often considered such rights in this state.

Id.

28. 256 N.W.2d 181 (Iowa 1977).

29. *Id.* at 184.

30. *Id.* Section 123.43 of the 1966 Iowa Code provided:

> Except in the case of liquor given or dispensed to a person under the age of twenty-one years within a private home and with the knowledge and consent of the parent or guardian for beverage or medicinal purposes . . . no person shall sell, give, or otherwise supply liquor to any such person under the age of twenty-one years, or knowingly permit any person under that age to consume alcoholic liquors.

IOWA CODE § 123.43 (1966) (current version at IOWA CODE § 123.47 (1985)).

31. Lewis v. State, 256 N.W.2d at 186. Section 123.13 of the 1966 Code read:

> The [Iowa Liquor Control] [C]ommission, or any member of the commission, shall

court, rejecting the state's immunity argument, found that the selling of liquor to one under the legal age was a negligent act.[32] In doing so, the court rejected the remoteness premise of *Cowman*,[33] and held that the furnishing of liquor may be the proximate cause of a third person's injuries.[34]

The majority in *Clark*, while relying on *Lewis*, did note that *Lewis* was in a commercial, and not a social setting.[35] However, the two cases are similar in the respect that in both, negligence was found from violation of a statute.[36]

The *Clark* majority found further support from *Haafke v. Mitchell*.[37] In *Haafke*, the plaintiffs were the parents of an automobile passenger who was killed when the car struck a tree.[38] They alleged that the driver of the car was intoxicated, due to the negligence of the defendants in serving too much beer to him.[39] The plaintiffs joined as defendants a liquor licensee, his employees, the owners of the tavern property, and the licensee's bonding company.[40]

The plaintiffs based their claim against the tavern employees on common-law principles, alleging negligence in violation of two Iowa statutes.[41] A majority of the Iowa Supreme Court, relying on *Lewis*,[42] found liability against the employees as alleged by the plaintiffs.[43]

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not be personally liable for any action at law for damages sustained by any person because of any action performed or done by the commission, or any member of the commission, in the performance of their respective duties in the administration and in the carrying out of the purposes and provisions of this chapter.

IOWA CODE § 123.13 (1966) (current version at IOWA CODE § 123.13 (1985)).

32. Lewis v. State, 256 N.W.2d at 187-89.

33. 250 Iowa 358, 92 N.W.2d 682 (1958). *See supra* notes 22-27 and accompanying text.

34. Lewis v. State, 256 N.W.2d at 191-92.

35. Clark v. Mincks, 364 N.W.2d at 229. "Moreover, Nancy [Mincks] was an adult, and the sale in *Lewis* was to a minor." *Id.*

36. *Id.*

37. 347 N.W.2d 381 (Iowa 1984).

38. *Id.* at 383.

39. *Id.* at 382.

40. *Id.* The district court dismissed all claims except for the plaintiffs' claim against the licensee based on the dram shop act. *Id.* at 382-83. The court also dismissed the plaintiffs' claims for exemplary damages. *Id.* at 383. On appeal, the Iowa Supreme Court affirmed the dismissal of claims against the bonding company and the owner of the tavern property. *Id.* at 383-84. The dismissal of exemplary damages was also affirmed. *Id.* at 389-90. The driver of the auto was also named as a defendant in this action, but the claim against him was not appealed. *Id.* at 383.

41. *Id.* at 384. The plaintiffs alleged that the employees served liquor to a minor in violation of section 123.47 of the Iowa Code. "No person shall sell, give, or otherwise supply alcoholic liquor or beer to any person knowing or having reasonable cause to believe that person to be under legal age . . . ." IOWA CODE § 123.47 (1985).

The plaintiffs also alleged that the employees served an intoxicated person in violation of section 123.49(1) of the Iowa Code. *See supra* note 20.

42. 256 N.W.2d 181 (Iowa 1977).

43. Haafke v. Mitchell, 347 N.W.2d at 388. The court stated:

The *Clark* majority, while relying on *Haafke*, again noted that *Haafke* arose in a commercial, not a social setting.[44] It also mentioned that the intoxicated person was a minor, but found nothing in the *Haafke* opinion that limited common-law liability to sales to minors.[45]

The *Clark* court then turned to decisions from other states to directly analyze the issue of social host liability.[46] The majority dismissed several of these decisions because they relied on the proximate cause theory, which Iowa abandoned in the *Lewis* decision.[47]

The majority acknowledged that in *Edgar v. Kajet*,[48] a New York court rejected social host liability for public policy reasons. In *Edgar*, the defendant Kajet was employed by Avis, Inc., a second defendant.[49] The plaintiffs alleged that Avis freely served intoxicants to Kajet to the point of intoxication, and later allowed him to leave and operate a motor vehicle, which subsequently struck the plaintiffs.[50] The court concluded that the extension of liability to social hosts was a matter of public policy, which should be determined by the legislature.[51]

> Applying the principles of common-law liability discussed above, we hold that these employees may be held liable under common law for negligence in furnishing liquor to Miller, and such negligence may be based upon violations of statute or ordinance as alleged here, under the authority of *Lewis*. This liability is not preempted by the dram shop act.

Id.

44. Clark v. Mincks, 364 N.W.2d at 229.

45. *Id.*

46. Coulter v. Superior Court, 21 Cal. 3d 144, 577 P.2d 669, 145 Cal. Rptr. 534 (1978) (imposed liability on social host for third party's injuries); Olson v. Ische, 343 N.W.2d 284 (Minn. 1984) (no duty for a passenger to control or influence the driver); Kelly v. Gwinnell, 96 N.J. 538, 476 A.2d 1219 (1984) (imposed liability on social host for third party's injuries); Edgar v. Kajet, 84 Misc. 2d 100, 375 N.Y.S.2d 548 (Sup. Ct. 1975), *aff'd*, 55 A.D.2d 597, 389 N.Y.S.2d 631 (1976), *appeal dismissed*, 41 N.Y.2d 802, 362 N.E.2d 626, 393 N.Y.S.2d 1026 (1977) (rejected action based on state dram shop statute against a non-seller of alcoholic beverages); Olsen v. Copeland, 90 Wis. 483, 280 N.W.2d 178 (1979) (rejected common-law action against tavern keeper on lack of proximate cause).

47. Clark v. Mincks, 364 N.W.2d at 229. *See* Klein v. Raysinger, 504 Pa. 141, 470 A.2d 507 (1983) (rejected social host liability on proximate cause basis). The *Clark* majority also cited the Wisconsin Supreme Court decision of *Olsen v. Copeland*, 90 Wis. 2d 483, 280 N.W.2d 178 (1979), as a case that rejected liability for lack of proximate cause. Clark v. Mincks, 364 N.W.2d at 229. But the Wisconsin Supreme Court has overruled *Olsen*. *See* Sorensen v. Jarvis, 119 Wis. 2d 627, 350 N.W.2d 108 (1984). Further, approximately one month after *Clark*, the Wisconsin Supreme Court held that a social host may be liable to third persons if the host negligently served intoxicants to a minor guest. Koback v. Crook, 123 Wis. 2d 259, __, 366 N.W.2d 857, 865 (1985).

48. 84 Misc. 2d 100, 375 N.Y.S.2d 548 (Sup. Ct. 1975), *aff'd*, 55 A.D.2d 597, 389 N.Y.S.2d 631 (1976), *appeal dismissed*, 41 N.Y.2d 802, 362 N.E.2d 626, 393 N.Y.S.2d 1026 (1977).

49. Edgar v. Kajet, 84 Misc. 2d 100, __, 375 N.Y.S.2d 548, 550 (Sup. Ct. 1975).

50. *Id.* at __, 375 N.Y.S.2d at 550.

51. *Id.* at __, 375 N.Y.S.2d at 552. The court noted:

> The implications of imposing civil liability on Avis herein are vast and far-reaching. Extending liability to non-sellers would open a virtual Pandora's box to a wide range

In support of finding social host liability for public policy reasons, however, the majority in *Clark* relied instead upon the New Jersey Supreme Court's holding in *Kelly v. Gwinnell*.[52] In *Kelly*, the plaintiff was severely injured when struck by an intoxicated driver, Gwinnell.[53] The plaintiff alleged that another defendant, Zak, served drinks to Gwinnell at Zak's home after Gwinnell was already intoxicated, and then allowed him to operate an automobile.[54]

The New Jersey Supreme Court, in finding the social host liable, concluded that the policy consideration of affording compensation to victims of drunken drivers was of far greater import than those which warranted a finding of nonliability.[55] In creating such liability, the court expressed hope that social hosts would use greater care in furnishing intoxicants to guests.[56]

The *Clark* court, after quoting *Edgar* and *Kelly* at length, did not itself discuss the merits or problems of judicially imposing social host liability. The majority only concluded that, based on the court's prior decisions in *Lewis* and *Haafke*,[57] which found common-law liability for violation of statute, defendants William and Larry Mincks should be held liable.[58]

> of numerous potential defendants when the [c]ourt does not believe that the legislature ever intended to enact a law that makes social drinking of alcoholic beverages and the giving of drinks of intoxicating liquors at social events actionable. . . . The implications are almost limitless as to situations that might arise when liquor is dispensed at a social gathering, holiday parties, family celebrations, outdoor barbecues and picnics, to cite a few examples. If civil liability were imposed on every host who, in a spirit of friendship, serves liquor, it could be similarly imposed on every host who, in a spirit of friendship, serves liquor.
>
> In the final analysis, the controlling consideration is public policy, and any extension of liability should be carefully considered after all the factors have been examined and weighed in our legislative process. . . .

Id.

52. 96 N.J. 538, 476 A.2d 1219 (1984).
53. *Id.* at _, 476 A.2d at 1220.
54. *Id.* at _, 476 A.2d at 1220.
55. *Id.* at _, 476 A.2d at 1224. The court emphasized:
> While we recognize the concern that our ruling will interfere with accepted standards of social behavior; will intrude on and somewhat diminish the enjoyment, relaxation, and camaraderie that accompany social gatherings at which alcohol is served; and that such gatherings and social relationships are not simply tangential benefits of a civilized society but are regarded by many as important, we believe that the added assurance of just compensation to the victims of drunken driving as well as the added deterrent effect of the rule on such driving outweigh the importance of those other values.

Id. at _, 476 A.2d at 1224.
56. *Id.* at _, 476 A.2d at 1226.
57. *See supra* notes 28-45 and accompanying text.
58. Clark v. Mincks, 364 N.W.2d at 231. The court then listed six factors which the plaintiff must be able to prove with substantial evidence:
> [W]e hold, and hold only, that a motion to dismiss should be overruled by virtue of section 123.49(1) of the Code when the allegations of the petition are such that the

The dissent, led by Justice McGiverin, took a different approach to the problem by examining the legislative history of an extensive line of past dram shop statutes in Iowa, and concluded that the legislature had precluded social hosts from liability.[59] It also directly attacked the majority's reliance on *Lewis* and *Haafke*.[60]

The dissent began by noting that in 1862, the legislature had imposed a cause of action against "any person" illegally furnishing liquor.[61] A century later, the legislature passed a statute similar to the current dram shop statute.[62] This second statute was passed without repealing the first "any person" statute; thus for a period of time Iowa had two statutes providing for civil actions for damages stemming from illegally serving liquor.[63]

In 1971, the legislature repealed these two statutes,[64] and passed a new statute which extended liability only to permittees and licensees.[65] In reviewing this history, the *Clark* dissent concluded that the legislature had expressly eliminated social host liability.[66]

The dissent, in a direct attack on the majority position, asserted that the court was incorrect in *Haafke* in holding employees liable based upon common-law principles for violating the statutory provision there in issue.[67] The dissent opined that this sort of liability, along with social host liability, was preempted by the legislative revisions of 1971.[68] The dissent also dismissed *Lewis* as controlling precedent on the grounds that it was decided when Iowa's original "any person" dram shop statute had been in force.[69] The dissent thus recommended overruling *Haafke* rather than ignoring leg-

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> plaintiff could introduce substantial evidence showing (1) the guest was intoxicated, (2) the host personally was actually aware the guest was intoxicated, (3) the host then made beer (or other intoxicating beverages) available to the guest, (4) the guest drank the beer (or beverages), (5) the guest, while intoxicated, then operated a motor vehicle, and (6) by reason of the intoxication, the guest operated the vehicle in a manner which caused injury to (or the death of) the plaintiff (or the plaintiff's decedent).

Id.

59. *Id.* at 232-33 (McGiverin, J., dissenting).

60. *Id.* at 233 (McGiverin, J., dissenting).

61. *Id.* at 232 (McGiverin, J., dissenting).

62. *See* 1963 Iowa Acts ch. 114, § 29, *amended by* 1963 Iowa Acts ch. 115, § 8 (current version at IOWA CODE § 123.92 (1985)).

63. Clark v. Mincks, 364 N.W.2d at 233 (McGiverin, J., dissenting).

64. 1971 Iowa Acts ch. 131, § 152.

65. 1971 Iowa Acts ch. 131, § 92 (codified as IOWA CODE § 123.92 (1985)).

66. Clark v. Mincks, 364 N.W.2d at 233 (McGiverin, J., dissenting). In support of this contention, the dissent quoted an Iowa Supreme Court case in which was noted: " '[I]t is apparent that cases such as this [i.e., attempting to impose dram shop liability on one who is neither a licensee or permittee] will not arise in the future.' " *Id.* (quoting Williams v. Klemesrud, 197 N.W.2d 614, 616 (Iowa 1972)).

67. Clark v. Mincks, 364 N.W.2d at 233 (McGiverin, J., dissenting).

68. *Id.* (McGiverin, J., dissenting).

69. *Id.* (McGiverin, J., dissenting).

islative intent by imposing liability on social hosts.[70]

Indeed, the Iowa Legislature recognized the scope and impact of the *Clark* decision, and reacted with alarming speed. On March 26, 1985, just one day after the *Clark* decision was issued, Senator Thomas Mann, Jr., filed an amendment to Senate File 516,[71] which would have abrogated the *Clark* decision.[72] The Senate never discussed the merits of the amendment, however, because it was ruled not germane to Senate File 516 by the Senate Chair.[73]

On April 9, 1985, the Senate approved a concurrent resolution[74] which established an interim committee to study the effects of the *Clark* decision and to make recommendations and present bill drafts to the 1986 Session of the Seventy-first General Assembly.[75] The committee initially met on September 26, 1985, to study the matter.[76] On October 24, 1985, the committee discussed two alternatives to deal with the *Clark* decision: (1) abrogating it completely; or (2) statutorily modifying the decision to narrow its scope.[77] Senator Mann, a member of the study committee, urged the former alternative, noting that he believed the *Clark* decision to be a prodigious change in the law, one which should be left to the legislature.[78] After this discussion, a motion was entertained and approved to recommend the abrogation of *Clark*.[79] The Committee then unanimously voted to withdraw from consid-

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70. *Id.* at 234 (McGiverin, J., dissenting).

71. IOWA SENATE JOURNAL at 1046 (March 26, 1985). Senate File 516 dealt with chemical tests for blood alcohol concentration. S.F. 516, 71st Iowa General Assembly, 1985 Regular Session.

72. Along with some minor revisions to section 123.49, subsection 1 of the Iowa Code, Senator Mann's amendment also added:

> a. A person who sells, dispenses, or gives an alcoholic beverage or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage or beer.
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> b. The general assembly hereby declares that this subsection shall be interpreted so that the holding of *Clark v. Mincks* (No. 36/83-343, 83-1164, Supreme Court of Iowa, March 20, 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages or beer rather than the serving of alcoholic beverages or beer as the proximate cause of injury inflicted upon another by an intoxicated person.

S-3492, 71st Iowa General Assembly, 1985 Regular Session (proposed amendment to S.F. 516, filed by Senator Thomas Mann, Jr.). For the present text of section 123.49 of the Iowa Code, see *supra* note 20.

73. IOWA SENATE JOURNAL at 1148 (April 1, 1985).

74. IOWA SENATE JOURNAL at 1271 (April 9, 1985).

75. S. Con. Res. 35, 71st Iowa General Assembly, 1985 Regular Session.

76. Minutes of State OWI Laws Study Committee at 1 (Sept. 26, 1985).

77. Minutes of State OWI Laws Study Committee at 15 (Oct. 24, 1985).

78. *Id.*

79. *Id.* at 16. The vote on this motion was six in the affirmative, two in the negative, and one absention. *Id.* A bill draft that would abrogate *Clark* was presented during the committee meeting. *Id.* at 15. *See* Proposed State OWI Laws Study Committee Bill, Legis. Serv. Bureau

eration a statutory modification of *Clark*.[80]

From the swiftness of its actions, it is evident that the Iowa Legislature is concerned about the implications of the *Clark* decision, and may very well choose to abrogate it.[81] If the legislature chooses to do so in a manner suggested by the Interim Study Committee,[82] then a question that arises is how this will affect certain Iowa Supreme Court decisions prior to *Clark*. If the bill draft proposed by the Interim Study Committee becomes law, then section 123.49 of the Iowa Code will be amended to read, in part:

> The general assembly declares that this subsection [123.49(1) of the Iowa

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No. 7188S-71. This bill, except for several nonsubstantive revisions, is almost identical to Sen. Mann's amendment, proposed during the 1985 Legislative Session. *See supra* notes 71-72 and accompanying text.

80. Minutes of State OWI Laws Study Committee at 16 (Oct. 24, 1985).

81. If the Iowa Legislature chooses to abrogate *Clark*, the method will almost certainly be identical to that taken by the California Legislature in overruling *Coulter v. Superior Court*, 21 Cal. 3d 144, 577 P.2d 669, 145 Cal. Rptr. 534 (1978). *Coulter*, as *Clark*, dealt with the liability of a social host. *Id.* at _, 577 P.2d at 670, 145 Cal. Rptr. at 535. The plaintiff alleged he was injured when a car in which he was a passenger hit an abutment. *Id.* at _, 577 P.2d at 671, 145 Cal. Rptr. at 536. The plaintiff further alleged that the defendant apartment manager carelessly and negligently served intoxicants to the driver of the car. *Id.* at _, 577 P.2d at 671, 145 Cal. Rptr. at 536. The California Supreme Court, as the Iowa Supreme Court did in *Clark*, found negligence based on the violation of a statute. *Id.* at _, 577 P.2d at 672, 145 Cal. Rptr. at 537. The court relied on what is currently codified as subsection A of section 25602 of the California Business and Professions Code. *Id.* at _, 577 P.2d at 672, 145 Cal. Rptr. at 537. "Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to . . . any obviously intoxicated person is guilty of a misdemeanor." CAL. BUS. & PROF. CODE § 25602(a) (West Supp. 1985). *Cf.* IOWA CODE § 123.49(1), *supra* note 20.

In 1978, the same year that *Coulter* was decided, the California Legislature abrogated the decision. *See* CAL. BUS. & PROF. CODE § 25602(b)-(c) (West Supp. 1985). These subsections read:

> (b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.
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> (c) The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as *Vesely v. Sager*, *Bernhard v. Harrah's Club* and *Coulter v. Superior Court* be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.

Id. (citations omitted).

See also CAL. CIV. CODE § 1714(b)-(c) (West 1985). Subsection C reads:

> No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person, property of, or death of, any third person, resulting from the consumption of such beverages.

Id. at (c). Iowa Senator Mann's proposed amendment was very similar in wording to that used by the California Legislature. *See supra* notes 71-72 and accompanying text.

82. As this casenote goes to print, House File 2123, which is identical to the Interim Committee Bill Draft, was introduced in the House and referred to the House Committee on Judiciary and Law Enforcement for consideration. IOWA HOUSE JOURNAL at 127 (Jan. 23, 1986). *See supra* note 79 and accompanying text.

> Code] shall be interpreted so that the holding of *Clark v. Mincks* . . . is abrogated in favor of prior judicial interpretation finding *the consumption* of alcoholic beverages, wine, or beer *rather than the serving* of alcoholic beverages, wine, or beer *as the proximate cause of injury* inflicted upon another by an intoxicated person.[83]

The language appears to reach beyond the *Clark* decision to affect both the *Lewis* and the *Haafke* decisions. It is obvious that the language used in the bill draft is taken almost word-for-word from a California statute that abrogated judicially-created social host liability in that state.[84] However, the California statute also specifically abrogated two prior California Supreme Court decisions that found the furnishing of intoxicants to be the proximate cause of a third person's injuries.[85] Does the Iowa Interim Study Committee intend to follow California's footsteps and recommend overturning *Lewis* and *Haafke*, thus reverting Iowa law back to the rationale of *Cowman*? At the October 24, 1985, meeting of the committee, Senator Ritsema, a member of the Committee, raised this issue.[86] If the legislature does abrogate *Clark*, it will be interesting to see whether the final bill will be in the same form as the interim committee bill draft; or whether, like *Clark*, it will specifically cite *Lewis* and *Haafke* for abrogation, or whether the scope of the language will be narrowed to overturn only the *Clark* decision.

Although it appears that some members of the Iowa Legislature are actively attempting to abrogate *Clark*, it is interesting to note that on January 29, 1985, approximately three months before the *Clark* decision, Senator Edgar Holden introduced a bill that would have extended liability to social hosts.[87] The bill apparently had no support, however, because after its introduction, there was no further reference to the bill during the 1985 Legislative Session.

If *Clark* is not abrogated, it is likely to have a major impact on future tort litigation in Iowa. The court's opinion was written in very broad, open-ended language, which will doubtless require the exact parameters of this opinion to be shaped by future appeals. Indeed, the supreme court had the

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83. Proposed State OWI Laws Study Committee Bill, Legis. Serv. Bureau No. 7188S-71 (emphasis added).

84. CAL. BUS. & PROF. CODE § 25602(b)-(c) (West Supp. 1985). *See supra* note 81.

85. CAL. BUS. & PROF. CODE § 25602(c) (West Supp. 1985). The two California Supreme Court cases, other than *Coulter v. Superior Court* 21 Cal. 3d 144, 577 P.2d 669, 145 Cal. Rptr. 534 (1978), *see supra* note 81, that were specifically abrogated were *Vesely v. Sager*, 5 Cal. 3d 153, 486 P.2d 151, 95 Cal. Rptr. 623 (1971) (held furnishing of intoxicants to be proximate cause of third person's injuries), and *Bernhard v. Harrah's Club*, 16 Cal. 3d 313, 546 P.2d 719, 128 Cal. Rptr. 215 (1976) (extended proximate cause rationale of *Vesely*).

86. Minutes of State OWI Laws Study Committee at 15-16 (Oct. 24, 1985).

87. S.F. 119, 71st Iowa General Assembly, 1985 Regular Session. The amendment proposed to change the current dram shop statute, section 123.92 of the Iowa Code, to include, along with licensees and permittees, "other persons" as persons liable. *Id.*

opportunity to do this in a decision filed October 16, 1985,[88] but the court split evenly and the appeal was affirmed by operation of law.[89] No substantive opinion was filed. As a result, many questions remain to be answered in the area of social host liability. The *Clark* dissent predicts the use of *Clark* to open whole new fields of liability by analogy to this decision:

> [T]he allowance of a claim here against a social host in the context of the intoxicated person who drives a motor vehicle will open the door for a plethora of claims in other fields by analogy to the present decision. It would be no great leap from the majority's holding to make the social host civilly responsible for the injury done by his or her intoxicated guest in assaults, sexual abuse, or other criminal acts that might occur after the guest has left the hospitality of the social host. Such a result is easily reached even though the majority has attempted to tighten its criteria for liability of the social host as much as possible.[90]

The *Clark* decision, without a doubt, is surely a bold move for the Iowa Supreme Court. A looming question that remains is whether the Iowa Legislature will abrogate it, as has been done in another jurisdiction.[91] If the legislature does choose to abrogate *Clark*, how will this affect other supreme court decisions on the liability of furnishers of intoxicants? If *Clark* is not abrogated, it will certainly open the doors for a flood of appeals to answer issues left unanswered by the court's opinion.

Robert D. Andeweg

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88. Bauer v. Dann, No. 84-1248 (Iowa 1985). In *Bauer*, it was alleged that the plaintiff Todd Bauer was injured in an automobile accident in which he was a passenger of a car driven by an intoxicated driver, named as a defendant. Brief for Appellants at 5-6, Bauer v. Dann, No. 84-1248 (Iowa 1985). Bauer and his parents, also named as plaintiffs, joined as defendants the hosts of two different New Year's Eve parties which the driver of the car allegedly attended and was served to the point of intoxication. *Id.* at 5. Summary judgment was granted to two of the four social hosts named as defendants. *Id.* The Iowa Supreme Court granted the plaintiffs an interlocutory appeal. *Id.*

89. Bauer v. Dann, No. 84-1248, slip op. at 2 (Iowa 1985).

90. Clark v. Mincks, 364 N.W.2d at 234 (McGiverin, J. dissenting).

91. *See supra* note 81 and accompanying text.