

CARDOZO

Benjamin N. Cardozo School of Law • Yeshiva University

Foundations of Legal Analysis and the Judicial Process
Fall 2025

Professor Newman

Introduction

This Orientation program in legal process, the legal system, and case reading and analysis, seeks to help students understand the methods and best practices of learning the law introduced in the first year of law school. In engaging students in the questions that characterize the U.S. legal system, and in teaching students the beginnings of the structure of the legal system, students are introduced to the central work of law students and lawyers: (i) understanding the structure and context of the legal system; (ii) reading and understanding judicial opinions; and (iii) learning how to synthesize and use cases in a law school class. We will introduce students to methods of learning the law including the skills of questioning, argument, application of legal sources to hypothetical scenarios, case briefing, taking class notes, and making connections between the cases students read. This is a foundational opportunity for the entire first year of law school and beyond, exposing students to the concepts and tools that will be learned and honed through doctrinal courses, the Lawyering and Legal Writing course, and other forms of legal study throughout law school and in legal practice.

Learning Objectives:

In Foundations of Legal analysis and the Judicial Process, students will develop:

1. A foundational understanding of the U.S. legal system, legal process, and judicial decision-making
2. Case reading and analysis skills
3. An understanding of how to analyze, argue, and apply law and facts
4. Effective and efficient approaches to law school learning, including notetaking and case briefing
5. Reflective approaches to ethical and inclusive conduct in law school, law learning, and academic and professional engagement

Program Material

All Foundations material will be provided for Orientation and posted on our Canvas page. Read the material provided before Orientation for our first meeting. Additional materials will be added during and after Orientation.

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Assignments and Reading

Session Date & Time	Session Topic	Assignments to Complete BEFORE session
Session 1 (90 mins) 8/18/25 10 -11:45A.M. (with 15 min break)	<ul style="list-style-type: none"> • Review of the U.S. government structure • Introduction to the Common Law • Overview of the court system • Lifecycle of a case • <i>Kelly v. Gwinnell</i> 	<ul style="list-style-type: none"> • Read <i>Kelly v. Gwinnell</i>
Session 2 (60 mins) 8/18/25 1-2 P.M.	<ul style="list-style-type: none"> • Why we read cases to learn the law • Binding and persuasive authorities and sources of law • What is a case brief; approaches to case briefing 	<ul style="list-style-type: none"> • Read: <ul style="list-style-type: none"> - How to Read a Legal Opinion - Lifecycle of a Case
Session 3 (90 mins) 8/19/25 10 -11:30 A.M.	<ul style="list-style-type: none"> • Case brief collaborative and peer review – <i>McCray v. Lockheed Martin</i> • How we use case law in law school • Introduction to the Socratic Method 	<ul style="list-style-type: none"> • Read Guidelines for Case Briefing • Brief (as directed) sections of <i>McCray v. Lockheed Martin</i>
Session 4 (60 mins) 8/19/25 12:30 -1:30 P.M.	<ul style="list-style-type: none"> • Simulated class using the <i>Kelly</i> and <i>McCray</i> cases • Fielding hypotheticals • Other learning tools: class notes; outlining 	

Superseded by Statute as Stated in [Kubert v. Best](#), N.J.Super.A.D., August 27, 2013

96 N.J. 538

Supreme Court of New Jersey.

Marie E. KELLY, Plaintiff-Appellant,

v.

Donald C. GWINNELL and Paragon Corp., Defendants-Appellants,

and

Joseph J. Zak and Catherine Zak, Defendants-Respondents.

Argued Feb. 21, 1984.

|
Decided June 27, 1984.

Opinion

WILENTZ, C.J.

This case raises the issue of whether a social host who enables an adult guest at his home to become drunk is liable to the victim of an automobile accident caused by the drunken driving of the guest. Here the host served liquor to the guest beyond the point at which the guest was visibly intoxicated. We hold the host may be liable under the circumstances of this case.

At the trial level, the case was disposed of, insofar as the issue before us is concerned, by summary judgment in favor of the social host. The record on which the summary judgment was based (pleadings, depositions, and certifications) discloses that defendant Donald Gwinnell, after driving defendant Joseph Zak home, spent an hour or two at Zak's home before leaving to return to his own home. During that time, according to Gwinnell, Zak, and Zak's wife, Gwinnell consumed two or three drinks of scotch on the rocks. Zak accompanied Gwinnell outside to his car, chatted with him, and watched as Gwinnell then drove off to go home. About twenty-five minutes later Zak telephoned Gwinnell's home to make sure Gwinnell had arrived there safely. The phone was answered by Mrs. Gwinnell, who advised Zak that Gwinnell had been involved in a head-on collision. The collision was with an automobile operated by plaintiff, Marie Kelly, who was seriously injured as a result.

After the accident Gwinnell was subjected to a blood test, which indicated a blood alcohol concentration of 0.286 percent.¹ Kelly's expert concluded from that reading that Gwinnell had consumed not two or three scotches but the equivalent of thirteen drinks; that while at Zak's home Gwinnell must have been showing unmistakable signs of intoxication; and that in fact he was severely intoxicated while at Zak's residence and at the time of the accident.

Kelly sued Gwinnell ... and thereafter plaintiff amended her complaint to include Mr. and Mrs. Zak as direct defendants. The Zaks moved for summary judgment, contending that as a matter of law a host is not liable for the negligence of an adult social guest who has become intoxicated while at the host's home. The trial court granted the motion on that basis [and] ... entered final judgment in favor of Zak pursuant to Rule 4:42-2. ... The Appellate Division affirmed, *Kelly v. Gwinnell*, 190 N.J.Super. 320, 463 A.2d 387 (1983). It noted, correctly, that New Jersey has no Dram Shop Act imposing liability on the provider of alcoholic beverages, and that while our decisional law had imposed such liability on licensees, common-law liability had been extended to a social host only where the guest was a minor. *Id.* at 322-23, 463 A.2d 387. It explicitly declined to expand that liability where, as here, the social guest was an adult. *Id.* at 325-26, 463 A.2d 387.

The Appellate Division's determination was based on the apparent absence of decisions in this country imposing such liability (except for those that were promptly overruled by the Legislature).² *Id.* at 324-25, 463 A.2d 367. The absence of such determinations is said to reflect a broad consensus that the imposition of liability arising from these social relations is unwise.

Certainly this immunization of hosts is not the inevitable result of the law of negligence, for conventional negligence analysis points strongly in exactly the opposite direction. “Negligence is tested by whether the reasonably prudent person at the time and place should recognize and foresee an unreasonable risk or likelihood of harm or danger to others.” *Rappaport v. Nichols*, 31 N.J. 188, 201, 156 A.2d 1 (1959); see also *Butler v. Acme Mkts., Inc.*, 89 N.J. 270, 445 A.2d 1141 (1982) (supermarket operator liable for failure to provide shoppers with parking lot security). When negligent conduct creates such a risk, setting off foreseeable consequences that lead to plaintiff’s injury, the conduct is deemed the proximate cause of the injury. “[A] tortfeasor is generally held answerable for the injuries which result in the ordinary course of events from his negligence and it is generally sufficient if his negligent conduct was a substantial factor in bringing about the injuries.” *Rappaport, supra*, 31 N.J. at 203, 156 A.2d 1; see *Ettin v. Ava Truck Leasing Inc.*, 53 N.J. 463, 483, 251 A.2d 278 (1969) (parking tractor-trailer across street is substantial factor in cause of accident when truck with failed brakes collides into trailer).

Under the facts here defendant provided his guest with liquor, knowing that thereafter the guest would have to drive in order to get home. Viewing the facts most favorably to plaintiff (as we must, since the complaint was dismissed on a motion for summary judgment), one could reasonably conclude that the Zaks must have known that their provision of liquor was causing Gwinnell to become drunk, yet they continued to serve him even after he was visibly intoxicated. By the time he left, Gwinnell was in fact severely intoxicated. A reasonable person in Zak’s position could foresee quite clearly that this continued provision of alcohol to Gwinnell was making it more and more likely that Gwinnell would not be able to operate his car carefully. Zak could foresee that unless he stopped providing drinks to Gwinnell, Gwinnell was likely to injure someone as a result of the negligent operation of his car. The usual elements of a cause of action for negligence are clearly present: an action by defendant creating an unreasonable risk of harm to plaintiff, a risk that was clearly foreseeable, and a risk that resulted in an injury equally foreseeable. Under those circumstances the only question remaining is whether a duty exists to prevent such risk or, realistically, whether this Court should impose such a duty.

In most cases the justice of imposing such a duty is so clear that the cause of action in negligence is assumed to exist simply on the basis of the actor’s creation of an unreasonable risk of foreseeable harm resulting in injury. In fact, however, more is needed, “more” being the value judgment, based on an analysis of public policy, that the actor owed the injured party a duty of reasonable care. *Palsgraf v. Long Island R.R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928). In *Goldberg v. Housing Auth. of Newark*, 38 N.J. 578, 583, 186 A.2d 291 (1962), this Court explained that “whether a *duty* exists is ultimately a question of fairness. The inquiry involves a weighing of the relationship of the parties, the nature of the risk, and the public interest in the proposed solution.” See also *Portee v. Jaffee*, 84 N.J. 88, 101, 417 A.2d 521 (1980) (whether liability for negligently inflicted emotional harm should be expanded depends “ultimately” on balancing of conflicting interests involved).

When the court determines that a duty exists and liability will be extended, it draws judicial lines based on fairness and policy. In a society where thousands of deaths are caused each year by drunken drivers,³ where the damage caused by such deaths is regarded increasingly as intolerable, where liquor licensees are prohibited from serving intoxicated adults, and where long-standing criminal sanctions against drunken driving have recently been significantly strengthened to the point where the Governor notes that they are regarded as the toughest in the nation, see Governor’s Annual Message to the N.J. State Legislature, Jan. 10, 1984, the imposition of such a duty by the judiciary seems both fair and fully in accord with the State’s policy. Unlike those cases in which the definition of desirable policy is the subject of intense controversy, here the imposition of a duty is both consistent with and supportive of a social goal—the reduction of drunken driving—that is practically unanimously accepted by society.

While the imposition of a duty here would go beyond our prior decisions, those decisions not only point clearly in that direction but do so despite the presence of social considerations similar to those involved in this case—considerations that are claimed to invest the host with immunity. In our first case on the subject, *Rappaport, supra*, 31 N.J. 188, 156 A.2d 1, we held a licensee liable for the consequences of a customer’s negligent operation of his automobile. The customer was a minor who had become intoxicated as a result of the consumption of liquor at various premises including the licensee’s. While observing that a standard

of conduct was contained in the statute prohibiting licensees from serving liquor to minors and in the regulation further prohibiting service to any person actually or apparently intoxicated, our decision that the licensee owed a duty to members of the general public was based on principles of common-law negligence.⁴

We later made it clear that the licensee's duty is owed to the customer as well, by holding in *Soronen v. Olde Milford Inn, Inc.*, 46 N.J. 582, 218 A.2d 630 (1966), that the licensee who served liquor to an intoxicated customer was liable to that customer for the death that resulted when the customer fell in the licensed premises while leaving the bar. While the situation of a licensee differs in some respects from that of a social host, some of the same underlying considerations relied on here in disputing liability are present in both: the notion that the real fault is that of the drunk, not the licensee, especially where the drinker is an adult (as he was in *Soronen*); and the belief—not as strong when applied to licensed premises as when applied to one's home—that when people get together for a friendly drink or more, the social relationships should not be intruded upon by possibilities of litigation.

The Appellate Division moved our decisional law one step further, a significant step, when it ruled in *Linn v. Rand*, 140 N.J. Super. 212, 356 A.2d 15 (1976), that a social host who serves liquor to a visibly intoxicated minor, knowing the minor will thereafter drive, may be held liable for the injuries inflicted on a third party as a result of the subsequent drunken driving of the minor. There, practically all of the considerations urged here against liability were present: it was a social setting at someone's home, not at a tavern; the one who provided the liquor to the intoxicated minor was a host, not a licensee; and all of the notions of fault and causation pinning sole responsibility on the drinker were present. The only difference was that the guest was a minor—but whether obviously so or whether known to the host is not disclosed in the opinion.⁵

In *Rappaport*, we explicitly noted that the matter did not involve any claim against “persons not engaged in the liquor business.” 31 N.J. at 205, 156 A.2d 1. We now approve *Linn* with its extension of this liability to social hosts. In expanding liability, *Linn* followed the rationale of *Rappaport* that the duty involved is a common law duty, not one arising from the statute and regulation prohibiting sales of liquor to a minor, neither of which applies to a social host.⁶ Cf. *Congini v. Portersville Valve Co.*, —Pa. —, —, 470 A.2d 515, 517–18 (1983) (in which the Pennsylvania Supreme Court relied exclusively on statutes criminalizing the provision of alcohol to minors as the basis for extending liability to a social host). The fair implication of *Rappaport* and *Soronen*, that the duty exists independent of the statutory prohibition, was thus made explicit in *Linn*. As the court there noted: “It makes little sense to say that the licensee in *Rappaport* is under a duty to exercise care, but give immunity to a social host who may be guilty of the same wrongful conduct merely because he is unlicensed.” 140 N.J. Super. at 217, 356 A.2d 15.⁷

The argument is made that the rule imposing liability on licensees is justified because licensees, unlike social hosts, derive a profit from serving liquor. We reject this analysis of the liability's foundation and emphasize that the liability proceeds from the duty of care that accompanies control of the liquor supply. Whatever the motive behind making alcohol available to those who will subsequently drive, the provider has a duty to the public not to create foreseeable, unreasonable risks by this activity.

We therefore hold that a host who serves liquor to an adult social guest, knowing both that the guest is intoxicated and will thereafter be operating a motor vehicle, is liable for injuries inflicted on a third party as a result of the negligent operation of a motor vehicle by the adult guest when such negligence is caused by the intoxication. We impose this duty on the host to the third party because we believe that the policy considerations served by its imposition far outweigh those asserted in opposition. 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. Indeed, we believe that given society's extreme concern about drunken driving, any change in social behavior resulting from the rule will be regarded

ultimately as neutral at the very least, and not as a change for the worse; but that in any event if there be a loss, it is well worth the gain.⁸

The liability we impose here is analogous to that traditionally imposed on owners of vehicles who lend their cars to persons they know to be intoxicated. *Knight v. Gosselin*, 124 Cal.App. 290, 12 P.2d 454 (Dist.Ct.App.1932); *Harris v. Smith*, 119 Ga.App. 306, 167 S.E.2d 198 (Ct.App.1969); *Pennington v. Davis-Child Motor Co.*, 143 Kan. 753, 57 P.2d 428 (1936); *Deck v. Sherlock*, 162 Neb. 86, 75 N.W.2d 99 (1956); *Mitchell v. Churches*, 119 Wash. 547, 206 P. 6 (1922). If, by lending a car to a drunk, a host becomes liable to third parties injured by the drunken driver's negligence, the same liability should extend to a host who furnishes liquor to a visibly drunken guest who he knows will thereafter drive away.

Some fear has been expressed that the extent of the potential liability may be disproportionate to the fault of the host. A social judgment is therein implied to the effect that society does not regard as particularly serious the host's actions in causing his guests to become drunk, even though he knows they will thereafter be driving their cars. We seriously question that value judgment; indeed, we do not believe that the liability is disproportionate when the host's actions, so relatively easily corrected, may result in serious injury or death. The other aspect of this argument is that the host's insurance protection will be insufficient. While acknowledging that homeowners' insurance will cover such liability,⁹ this argument notes the risk that both the host and spouse will be jointly liable. The point made is not that the level of insurance will be lower in relation to the injuries than in the case of other torts, but rather that the joint liability of the spouses may result in the loss of their home and other property to the extent that the policy limits are inadequate.¹⁰ If only one spouse were liable, then even though the policy limits did not cover the liability, the couple need not lose their home because the creditor might not reach the interest of the spouse who was not liable. *Newman v. Chase*, 70 N.J. 254, 266, 359 A.2d 474 (1976); *King v. Greene*, 30 N.J. 395, 153 A.2d 49 (1959); *ESB, Inc. v. Fisher*, 185 N.J.Super. 373, 448 A.2d 1030 (Ch.Div.1982). We observe, however, that it is common for both spouses to be liable in automobile accident cases. It may be that some special form of insurance could be designed to protect the spouses' equity in their homes in cases such as this one. In any event, it is not clear that the loss of a home by spouses who, by definition, have negligently caused the injury, is disproportionate to the loss of life of one who is totally innocent of any wrongdoing.

Given the lack of precedent anywhere else in the country, however, we believe it would be unfair to impose this liability retroactively. *Merenoff v. Merenoff*, 76 N.J. 535, 388 A.2d 951 (1978); *Darrow v. Hanover Twp.*, 58 N.J. 410, 278 A.2d 200 (1971); *Willis v. Department of Conservation & Economic Dev.*, 55 N.J. 534, 264 A.2d 34 (1970). Homeowners who are social hosts may desire to increase their policy limits; apartment dwellers may want to obtain liability insurance of this kind where perhaps they now have none. The imposition of retroactive liability could be considered unexpected and its imposition unfair. We therefore have determined that the liability imposed by this case on social hosts shall be prospective, applicable only to events that occur after the date of this decision. We will, however, apply the doctrine to the parties before us on the usual theory that to do otherwise would not only deprive the plaintiff of any benefit resulting from her own efforts but would also make it less likely that, in the future, individuals will be willing to claim rights, not yet established, that they believe are just.

The goal we seek to achieve here is the fair compensation of victims who are injured as a result of drunken driving. The imposition of the duty certainly will make such fair compensation more likely. While the rule in this case will tend also to deter drunken driving, there is no assurance that it will have any significant effect. The lack of such assurance has not prevented us in the past from imposing liability on licensees. Indeed, it has been only recently that the sanction of the *criminal* law was credited with having some significant impact on drunken driving.¹¹ We need not, however, condition the imposition of a duty on scientific proof that it will result in the behavior that is one of its goals. No one has suggested that the common-law duty to drive carefully should be abolished because it has apparently not diminished the mayhem that occurs regularly on our highways. We believe the rule will make it more likely that hosts will take greater care in serving alcoholic beverages at social gatherings so as to avoid not only the moral responsibility but the economic liability that would occur if the guest were to injure someone as a result of his drunken driving.

We do not agree that the issue addressed in this case is appropriate only for legislative resolution. Determinations of the scope of duty in negligence cases has traditionally been a function of the judiciary. The history of the cases cited above evidences a continuing judicial involvement in these matters. Without the benefit of any Dram Shop Act imposing liability on licensees, legislation that is quite common in other states, this Court determined that such liability nevertheless existed.¹² We did so in 1959 and have continued to expand that concept since then. We know of no legislative activity during that entire period from 1959 to date suggesting that our involvement in these matters was deemed inappropriate; even after the judiciary expanded this liability to include social hosts in its decision in *Linn*, there was no adverse reaction on the part of the Legislature. In fact, the Legislature's passage of S. 1054, imposing criminal liability on anyone who purposely or knowingly serves alcoholic beverages to underage persons, indicates that body's approval of the position taken eight years earlier in *Linn*. The subject matter is not abstruse, and it can safely be assumed that the Legislature is in fact aware of our decisions in this area. Absent such adverse reaction, we assume that our decisions are found to be consonant with the strong legislative policy against drunken driving.

* * *

This Court has decided many significant issues without any prior legislative study. In any event, if the Legislature differs with us on issues of this kind, it has a clear remedy. [citations omitted]. . .

We are satisfied that our decision today is well within the competence of the judiciary. Defining the scope of tort liability has traditionally been accepted as the responsibility of the courts. Indeed, given the courts' prior involvement in these matters, our decision today is hardly the radical change implied by the dissent but, while significant, is rather a fairly predictable expansion of liability in this area.¹⁴

* * *

If we but step back and observe ourselves objectively, we will see a phenomenon not of merriment but of cruelty, causing misery to innocent people, tolerated for years despite our knowledge that without fail, out of our extraordinarily high number of deaths caused by automobiles, nearly half have regularly been attributable to drunken driving. *See supra*, at 1222 n. 3. Should we be so concerned about disturbing the customs of those who knowingly supply that which causes the offense, so worried about their costs, so worried about their inconvenience, as if they were the victims rather than the cause of the carnage? And while the dissent is certainly correct that we could learn more through an investigation, to characterize our knowledge as “scant” or insufficient is to ignore what is obvious, and that is that drunken drivers are causing substantial personal and financial destruction in this state and that a goodly number of them have been drinking in homes as well as taverns. Does a court really need to know more? Is our rule vulnerable because we do not know—nor will the Legislature—how much injury will be avoided or how many lives saved by this rule? Or because we do not know how many times the victim will require compensation from the host in order to be made whole?

This Court senses that there may be a substantial change occurring in social attitudes and customs concerning drinking, whether at home or in taverns. We believe that this change may be taking place right now in New Jersey and perhaps elsewhere. It is the upheaval of prior norms by a society that has finally recognized that it must change its habits and do whatever is required, whether it means but a small change or a significant one, in order to stop the senseless loss inflicted by drunken drivers. We did not cause that movement, but we believe this decision is in step with it.

* * *

We therefore reverse the judgment in favor of the defendants Zak and remand the case to the Law Division for proceedings consistent with this opinion.

GARIBALDI, J., dissenting.

Today, this Court holds that a social host who knowingly enables an adult guest to become intoxicated knowing that the guest will operate a motor vehicle is liable for damages to a third party caused by the intoxicated guest. The imposition of this liability on a social host places upon every citizen of New Jersey who pours a drink for a friend a heavy burden to monitor and regulate guests. It subjects the host to substantial potential financial liability that may be far beyond the host's resources.

My position as a strong advocate of legal measures to combat drunk driving is established. See *In re Kallen*, 92 N.J. 14, 455 A.2d 460 (1983). The majority need not parade the horrors that have been caused by drunk drivers to convince me that there is always room for stricter measures against intoxicated drivers. I too am concerned for the injured victim of a drunken driver. However, the almost limitless implications of the majority's decision lead me to conclude that the Legislature is better equipped to effectuate the goals of reducing injuries from drunken driving and protecting the interests of the injured party, without placing such a grave burden on the average citizen of this state.

I

Prior to today's decision, this Court had imposed liability only on those providers of alcoholic beverages who were licensed by the State. See *Rappaport v. Nichols*, 31 N.J. 188, 156 A.2d 201 (1959). The Appellate Division also had expanded the liability to a social host who served liquor to a minor. *Linn v. Rand*, 140 N.J. Super. 212, 356 A.2d 15 (App.Div.1976).¹ Although both of these cases were based on common-law negligence, the courts deemed the regulations restricting the service of alcohol to minors significant enough evidence of legislative policy to impart knowledge of foreseeable risk on the provider of the alcohol and to fashion a civil remedy for negligently creating that risk.

Many other states have considered the problem before us today but no judicial decision establishing a cause of action against a social host for serving liquor to an adult social guest is currently in force. Any prior judicial attempts to establish such a cause of action have been abrogated or restricted by subsequent legislative action. See, e.g., *Cal.Civ.Code § 1714* (as amended Stats.1978, ch. 929, § 2, p. 2904); *Or.Rev.Stat. § 30.955* (1979).

* * *

II

My reluctance to join the majority is not based on any exaggerated notion of judicial deference to the Legislature. Rather, it is based on my belief that before this Court plunges into this broad area of liability and imposes high duties of care on social hosts, it should carefully consider the ramifications of its actions. The Court acts today with seemingly scant knowledge and little care for the possible negative consequences of its decision.

The magnitude of the problem with which we are dealing is entirely unknown. As the Illinois Appellate Court noted in *Miller v. Moran*, *supra*, 96 Ill.App.3d at 600, 421 N.E.2d at 1049, the injured party normally has a remedy against the direct perpetrator of the injury, the intoxicated driver. The majority's portrayal of the specter of many innocent victims with no chance of recovery against drunk drivers is specious.

* * *

A significant difference between an average citizen and a commercial licensee is the average citizen's lack of knowledge and expertise in determining levels and degrees of intoxication. Licensed commercial providers, unlike the average citizen, deal with the alcohol-consuming public every day. This experience gives them some expertise with respect to intoxication that social hosts lack. A social host will find it more difficult to determine levels and degrees of intoxication.

The majority holds that a host will be liable only if he serves alcohol to a guest knowing both that the guest is intoxicated and that the guest will drive. *Ante* at 1224. Although this standard calls for a subjective determination of the extent of the host's knowledge, a close reading of the opinion makes clear that the majority actually is relying on objective evidence. The majority takes the results of Gwinnell's blood alcohol concentration test and concludes from that test that "the Zaks must have known that their provision of liquor was causing Gwinnell to become drunk * * *." *Ante* at 1221.

Whether a guest is or is not intoxicated is not a simple issue. Alcohol affects everyone differently. "[T]he precise effects of a particular concentration of alcohol in the blood varies from person to person depending upon a host of other factors. See generally Perr, 'Blood Alcohol Levels and "Diminished Capacity",' 3 (No. 4) J. Legal Med. 28-30 (April 1975)." *State v. Stasio*, 78 N.J. 467, 478 n. 5, 396 A.2d 1129 (1979). One individual can consume many drinks without exhibiting any signs of intoxication. Alcohol also takes some time to get into the bloodstream and show its outward effects. Experts estimate that it takes alcohol twenty to thirty minutes to reach its highest level in the bloodstream. See *American Medical Association, Alcohol and the Impaired Driver* (1968). Thus, a blood alcohol concentration test demonstrating an elevated blood alcohol level after an accident may not mean that the subject was obviously intoxicated when he left the party some time earlier. "Moreover, a state of obvious intoxication is a condition that is very susceptible to after the fact interpretations, *i.e.*, objective review of a subjective decision. These factors combine to make the determination that an individual is obviously intoxicated not so obvious after all." Comment, "Social Host Liability for Furnishing Alcohol: A Legal Hangover?" 1978 *Pac.L.J.* 95, 103. Accordingly, to impose on average citizens a duty to comprehend a person's level of intoxication and the effect another drink would ultimately have on such person is to place a very heavy burden on them.

The nature of home entertaining compounds the social host's difficulty in determining whether a guest is obviously intoxicated before serving the next drink. In a commercial establishment, there is greater control over the liquor; a bartender or waitress must serve the patron a drink. Not so in a home when entertaining a guest. At a social gathering, for example, guests frequently serve themselves or guests may serve other guests. Normally, the host is so busy entertaining he does not have time to analyze the state of intoxication of the guests. Without constant face-to-face contact it is difficult for a social host to avoid serving alcohol to a person on the brink of intoxication. Furthermore, the commercial bartender usually does not drink on the job. The social host often drinks with the guest, as the Zaks did here. The more the host drinks, the less able he will be to determine when a guest is intoxicated. It would be anomalous to create a rule of liability that social hosts can deliberately avoid by becoming drunk themselves.

* * *

The majority suggests that my fears about imposition of liability on social hosts who are not in a position to monitor the alcohol consumption of their guests are "purely hypothetical" in that the present case involves a host and guest in a one-to-one situation. It is unrealistic to assume that the standards set down by the Court today will not be applied to hosts in other social situations. Today's holding leaves the door open for all of the speculative and subjective impositions of liability that I fear.

* * *

Further, it is not clear from the Court's opinion to what lengths a social host must go to avoid liability. Is the host obligated to use physical force to restrain an intoxicated guest from drinking and then from driving? Or is the host limited to delay and subterfuge tactics short of physical force? What is the result when the host tries to restrain the guest but fails? Is the host still liable? The majority opinion is silent on the extent to which we must police our guests.

III

The most significant difference between a social host and a commercial licensee, however, is the social host's inability to spread the cost of liability. The commercial establishment spreads the cost of insurance against liability among its customers. The social host must bear the entire cost alone. While the majority briefly discusses this issue, noting that it may result in a catastrophic loss of a home to a husband and wife, it apparently does not consider this much of a problem to the average New Jersey citizen. It assumes that such liability is now covered or will be covered under the homeowner's insurance policy.

The majority cites no authority for its belief that actions against social hosts will be covered under homeowner's insurance. This new cause of action will be common and may result in large awards to third parties. Even if it is assumed that homeowner's insurance will cover this cause of action, it is unrealistic to believe that insurance companies will not raise their premiums in response to it.

Furthermore, many homeowners and apartment renters may not even have homeowner's insurance and probably cannot afford it. Other homeowners may not have sufficient insurance to cover the limitless liability that the Court seeks to impose. These people may lose everything they own if they are found liable as negligent social hosts under the Court's scheme. The individual economic cost to every New Jersey citizen should be weighed before today's result is reached.

* * *

IV

In conclusion, in trivializing these objections as “cocktail party customs”, *ante* at 1230 and “inconvenience”, *ante* at 1227, the majority misses the point. I believe that an in-depth review of this problem by the Legislature will result in a solution that will further the goals of reducing injuries related to drunk driving and adequately compensating the injured party, while imposing a more limited liability on the social host. Imaginative legislative drafting could include: funding a remedy for the injured party by contributions from the parties most responsible for the harm caused, the intoxicated motorists; making the social host secondarily liable by requiring a judgment against the drunken driver as a prerequisite to suit against the host; limiting the amount that could be recovered from a social host; and requiring a finding of wanton and reckless conduct before holding the social host liable.

I do not propose to fashion a legislative solution. That is for the Legislature. I merely wish to point out that the Legislature has a variety of alternatives to this Court's imposition of unlimited liability on every New Jersey adult. Perhaps, after investigating all the options, the Legislature will determine that the most effective course is to impose the same civil liability on social hosts that the majority has imposed today. I would have no qualms about that legislative decision so long as it was reached after a thorough investigation of its impact on average citizens of New Jersey.

For reversal and remandment —Chief Justice WILENTZ, and Justices CLIFFORD, SCHREIBER, HANDLER, POLLOCK and O'HERN—6.

Opposed —Justice GARIBALDI—1.

Footnotes

- ¹ Under present law, a person who drives with a blood alcohol concentration of 0.10 percent or more violates *N.J.S.A. 39:4–50* as amended by *L. 1983, c. 129*, the statute concerning driving while under the influence of intoxicating liquor.
- ² The Appellate Division noted that several state court decisions imposing liability against social hosts under circumstances similar to those in this case were abrogated by later legislative action. We note that legislation enacted in Oregon did not abrogate the state court's holding in *Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, 258 Or. 632, 485 P.2d 18 (1971). The court found that a host directly serving liquor to a guest has a duty to refuse to serve the guest when it would be unreasonable under the circumstances to permit the guest to drink. Eight years later the legislature enacted *Or.Rev.Stat. § 30.955*, limiting a cause of action against a private host for damages incurred or caused by an intoxicated social guest to when the host “has served or provided alcoholic beverages to a social guest when such guest was visibly intoxicated.” The legislature did not, therefore, preclude liability of private hosts under a negligence theory but instead decided that the social guest must be visibly intoxicated before the host will be held accountable for injuries caused by the guest's intoxicated conduct. Nevertheless, we acknowledge that many jurisdictions have declined to extend liability to social hosts in circumstances similar to those present in this case. See, e.g., *Klein v. Raysinger*, — Pa. —, 470 A.2d 507, 510 (1983), and collected cases cited therein.
- ³ From 1978 to 1982 there were 5,755 highway fatalities in New Jersey. Alcohol was involved in 2,746 or 47.5% of these deaths. Of the 629,118 automobile accident injuries for the same period, 131,160, or 20.5% were alcohol related. The societal cost for New Jersey alcohol-related highway deaths for this period has been estimated as \$1,149,516,000.00, based on statistics and documents obtained from the New Jersey Division of Motor Vehicles. The total societal cost figure for all alcohol-related accidents in New Jersey in 1981 alone, including deaths, personal injuries and property damage was \$1,594,497,898.00. *New Jersey Division of Motor Vehicles, Safety, Service, Integrity, A Report on the Accomplishments of the New Jersey Division of Motor Vehicles* 45 (April 1, 1982 through March 31, 1983). These New Jersey statistics are consistent with nationwide figures. *Presidential Commission on Drunk Driving, Final Report* 1 (1983).
- ⁴ We noted that the statutory and regulatory violations could properly be considered by a jury as evidence of the licensee's negligence. *Rappaport*, 31 N.J. at 202–03, 156 A.2d 1.
- ⁵ The case was decided on a motion for summary judgment. The court noted that the record did not indicate the minor's age. The opinion does not rely at all on the host's ability easily to determine the fact that the guest was a minor, a factor relied on to some extent in the arguments seeking to distinguish the present case from *Linn*.
- ⁶ We note that the Senate and Assembly have recently passed a bill that, if signed into law, would make it a disorderly persons offense knowingly to offer or serve an alcoholic beverage to a person under the legal drinking age. Senate Bill No. S. 1054.
- ⁷ While *Linn*'s statement of the legal rule does not explicitly go beyond the situation in which the social guest was a minor (140 N.J.Super. at 217, 219, 220, 356 A.2d 15), its reasoning would apply equally to an adult guest.
- ⁸ We note that our holding and the reasoning on which it is based may be regarded as inconsistent with *Anslinger v. Martinsville, Inn, Inc.*, 121 N.J.Super. 525, 298 A.2d 84 (App.Div.1972), certif. den., 62 N.J. 334, 301 A.2d 449 (1973). There, the court refused to impose liability on business associates for the injuries a drunken guest suffered after leaving their social affair. The guest died when the car he was driving rammed into a truck on a highway. That court also ruled that decedent's drunkenness constituted contributory negligence, available to the business (or social) host as a defense (as distinguished from its unavailability where defendant is a licensee; see *Soronen, supra*, 46 N.J. 582, 218 A.2d 630).

We express no opinion on that question, which is not before us since Gwinnell's only claim against Zak is for contribution or indemnification and not for personal injuries. While, as noted *infra* at 1230, Zak and Gwinnell may be liable as joint tortfeasors as to Kelly, any right of contribution or indemnification between the two will have to be determined by the trial court on remand. That determination presumably will require consideration of the effect, if any, of *Soronen*, *Anslinger*, and the Comparative Negligence Act, *N.J.S.A. 2A:15-5.1-5.3* (which was not in effect at the time of those decisions).

The *Anslinger* court also discussed, in dictum, the policy against imposing liability on hosts in social or quasi-business settings. Today, the facts of the case before us persuade us that policy considerations warrant imposing such a duty on a social host. We note also the case of *Figuly v. Knoll*, 185 N.J.Super. 477, 449 A.2d 564 (Law.Div.1982), which, on facts substantially similar to those before us, held the social host liable.

⁹ The dissent challenges our assumption that present homeowners' policies cover the liability imposed by this decision. At oral argument, counsel for both sides indicated that they believe typical homeowners' policies would cover such liability. Even if that is so, however, says the dissent, the homeowner/social host is unable "to spread the cost of liability." *Post* at 1242. The contrast is then made with the commercial licensee who "spreads the cost of insurance against liability among its or her customers." *Id.* But the critical issue here is not whether the homeowner can pass the cost on or must bear it himself, but whether tort law should be used to spread the risk over a large segment of society through the device of insurance rather than imposing the entire risk on the innocent victim of drunken driving. Obviously there will be some additional insurance premium at some point that homeowners and renters will have to bear. Their inability to pass that cost on to others, however, is no more persuasive than that same argument would be as to the "average citizen's" automobile liability insurance or, for that matter, for homeowners' insurance as it now exists.

¹⁰ We need not, and do not, reach the question of which spouse is liable, or whether both are liable, and under what circumstances.

¹¹ Within the last year those laws have been strengthened and officials have stepped up enforcement efforts. Since 1980, the number of drunk driving arrests in New Jersey has increased by approximately 40%. The number of drunk driving deaths has decreased in this State from a high of 376 deaths in 1981 to a reported preliminary total of 270 deaths in 1983. Since the State minimum drinking age was returned to 21 years in 1983, the number of fatal accidents involving people under the age of 21 has dropped significantly. In 1982, drunken drivers between the ages of 18 and 20 were responsible for 67 highway fatalities. Preliminary figures for 1983 show that this age group was responsible for 38 drunk driving deaths that year. There has been a corresponding drop in the number of injuries sustained in accidents involving drunk drivers. *New Jersey Division of Motor Vehicles, Safety, Service, Integrity, A Report on the Accomplishments of the New Jersey Division of Motor Vehicles, supra*, at 44. Law enforcement officials believe that the decrease in accidents and injuries is attributable to the recent changes in these laws. See Comments of Attorney General, *quoted in* "Highway Carnage," *Herald News*, Mar. 13, 1984, p. A-10; Comments of Director, Division of Motor Vehicles, *quoted in* "Teen Road Carnage Drops Sharply in First Year of Higher Drinking Age," *The Star-Ledger*, Mar. 8, 1984, p. 1.

¹² Justice Jacobs adverted to this fact in his opinion in *Soronen, supra*: "Many states have dram shop acts in which the legislature has specifically fixed the scope and extent of the tavern keeper's civil responsibility for injuries which result from his service of alcoholic beverages to an intoxicated person. We have no such act and must therefore deal with the common law principles of negligence and proximate causation." 46 N.J. at 592, 218 A.2d 630.

¹³ The dissent's reference to Oregon statutes as abrogating or restricting a prior judicial determination in favor of the cause of action, *post* at 1231 is incorrect. The Oregon statute accepted the judicial determination similar to that made in this

case; its effect, as noted *supra* at 1221 n. 2, was only to prevent further expansions of liability beyond that allowed by this Court today.

¹⁴ In view of the arguments set forth, the dissent's approval of the decision in *Linn* is difficult to understand. *Post* at 1230. The difference between that case and the instant case is simply one of degree. There a social host was held liable for the consequences of drunken driving by a minor who had been served by the host in a social setting. The legislative indicator of liability was not significantly stronger (in *Linn* a statutory and regulatory prohibition was involved, applicable, however, only to licensees; here only a regulatory prohibition); in both cases social habits may be affected, substantial economic consequences may result, and in both the court acts without the advantage of a legislative inquiry. The dissent's notion that *Linn* can be distinguished because "minors occupy a special place in our society and traditionally have been protected by state regulation from the consequences of their own immaturity" fails to acknowledge that the thrust of the case was to provide compensation for an innocent victim of a drunken driver where the driver happened to be a minor and not even a party to the action. The entire rationale of the opinion is that there is no sound reason to impose liability on a licensee and not on a social host. There is not a word nor the slightest implication in the opinion suggesting that the underlying purpose of the decision was to protect minors.

¹ If this case involved service of alcohol by a social host to a minor guest, I would vote with the majority in approving *Linn v. Rand, supra*, 140 N.J.Super. 212, 356 A.2d 15, to the extent it has been interpreted as applying only to social hosts who serve liquor to minors. The distinction I draw is based on the clearly and frequently expressed legislative policy that minors should not drink alcoholic beverages, *see, e.g., N.J.S.A. 33:1-77*, and on the fact that minors occupy a special place in our society and traditionally have been protected by state regulation from the consequences of their own immaturity. Although the majority sees no basis for this distinction, I am not alone in making it. *Compare Klein v. Raysinger, —Pa. —, 470 A.2d 507 (1983)* (in which the Supreme Court of Pennsylvania refused to extend liability to a social host who serves an adult guest) with *Congini v. Porterville Valve Co., —Pa. —, 470 A.2d 515 (1983)* (decided on the same day as *Klein* by the same court but extending liability to a social host who served liquor to a minor guest); *see also* Senate Bill S-1054 (recently passed by the Senate and Assembly imposing criminal liability on social hosts who serve liquor to minors but not mentioning hosts who serve liquor to adults).

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HOW TO READ A LEGAL OPINION

A GUIDE FOR NEW LAW STUDENTS

Orin S. Kerr

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HOW TO READ A LEGAL OPINION

A GUIDE FOR NEW LAW STUDENTS

Orin S. Kerr

This essay is designed to help new law students prepare for the first few weeks of class. It explains what judicial opinions are, how they are structured, and what law students should look for when reading them.

I. WHAT'S IN A LEGAL OPINION?

When two people disagree and that disagreement leads to a lawsuit, the lawsuit will sometimes end with a ruling by a judge in favor of one side. The judge will explain the ruling in a written document referred to as an “opinion.” The opinion explains what the case is about, discusses the relevant legal principles, and then applies the law to the facts to reach a ruling in favor of one side and against the other.

Modern judicial opinions reflect hundreds of years of history and practice. They usually follow a simple and predictable formula. This

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section takes you through the basic formula. It starts with the introductory materials at the top of an opinion and then moves on to the body of the opinion.

The Caption

The first part of the case is the title of the case, known as the “caption.” Examples include *Brown v. Board of Education* and *Miranda v. Arizona*. The caption usually tells you the last names of the person who brought the lawsuit and the person who is being sued. These two sides are often referred to as the “parties” or as the “litigants” in the case. For example, if Ms. Smith sues Mr. Jones, the case caption may be *Smith v. Jones* (or, depending on the court, *Jones v. Smith*).

In criminal law, cases are brought by government prosecutors on behalf of the government itself. This means that the government is the named party. For example, if the federal government charges John Doe with a crime, the case caption will be *United States v. Doe*. If a state brings the charges instead, the caption will be *State v. Doe*, *People v. Doe*, or *Commonwealth v. Doe*, depending on the practices of that state.¹

The Case Citation

Below the case name you will find some letters and numbers. These letters and numbers are the legal citation for the case. A citation tells you the name of the court that decided the case, the law book in which the opinion was published, and the year in which the court decided the case. For example, “U.S. Supreme Court, 485 U.S. 759 (1988)” refers to a U.S. Supreme Court case decided in 1988 that appears in Volume 485 of the *United States Reports* starting at page 759.

The Author of the Opinion

The next information is the name of the judge who wrote the opinion. Most opinions assigned in law school were issued by courts

¹ English criminal cases normally will be *Rex v. Doe* or *Regina v. Doe*. Rex and Regina aren’t the victims: the words are Latin for “King” and “Queen.” During the reign of a King, English courts use “Rex”; during the reign of a Queen, they switch to “Regina.”

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with multiple judges. The name tells you which judge wrote that particular opinion. In older cases, the opinion often simply states a last name followed by the initial “J.” No, judges don’t all have the first initial “J.” The letter stands for “Judge” or “Justice,” depending on the court. On occasion, the opinion will use the Latin phrase “per curiam” instead of a judge’s name. Per curiam means “by the court.” It signals that the opinion reflects a common view among all the judges rather than the writings of a specific judge.

The Facts of the Case

Now let’s move on to the opinion itself. The first part of the body of the opinion presents the facts of the case. In other words, what happened? The facts might be that Andy pulled out a gun and shot Bob. Or maybe Fred agreed to give Sally \$100 and then changed his mind. Surprisingly, there are no particular rules for what facts a judge must include in the fact section of an opinion. Sometimes the fact sections are long, and sometimes they are short. Sometimes they are clear and accurate, and other times they are vague or incomplete.

Most discussions of the facts also cover the “procedural history” of the case. The procedural history explains how the legal dispute worked its way through the legal system to the court that is issuing the opinion. It will include various motions, hearings, and trials that occurred after the case was initially filed. Your civil procedure class is all about that kind of stuff; you should pay very close attention to the procedural history of cases when you read assignments for your civil procedure class. The procedural history of cases usually will be less important when you read a case for your other classes.

The Law of the Case

After the opinion presents the facts, it will then discuss the law. Many opinions present the law in two stages. The first stage discusses the general principles of law that are relevant to cases such as the one the court is deciding. This section might explore the history of a particular field of law or may include a discussion of past cases (known as “precedents”) that are related to the case the court is de-

ciding. This part of the opinion gives the reader background to help understand the context and significance of the court's decision. The second stage of the legal section applies the general legal principles to the particular facts of the dispute. As you might guess, this part is in many ways the heart of the opinion: It gets to the bottom line of why the court is ruling for one side and against the other.

Concurring and/or Dissenting Opinions

Most of the opinions you read as a law student are “majority” opinions. When a group of judges get together to decide a case, they vote on which side should win and also try to agree on a legal rationale to explain why that side has won. A majority opinion is an opinion joined by the majority of judges on that court. Although most decisions are unanimous, some cases are not. Some judges may disagree and will write a separate opinion offering a different approach. Those opinions are called “concurring opinions” or “dissenting opinions,” and they appear after the majority opinion. A “concurring opinion” (sometimes just called a “concurrence”) explains a vote in favor of the winning side but based on a different legal rationale. A “dissenting opinion” (sometimes just called a “dissent”) explains a vote in favor of the losing side.

II. COMMON LEGAL TERMS FOUND IN OPINIONS

Now that you know what's in a legal opinion, it's time to learn some of the common words you'll find inside them. But first a history lesson, for reasons that should be clear in a minute.

In 1066, William the Conqueror came across the English Channel from what is now France and conquered the land that is today called England. The conquering Normans spoke French and the defeated Saxons spoke Old English. The Normans took over the court system, and their language became the language of the law. For several centuries after the French-speaking Normans took over England, lawyers and judges in English courts spoke in French. When English courts eventually returned to using English, they continued to use many French words.

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Why should you care about this ancient history? The American colonists considered themselves Englishmen, so they used the English legal system and adopted its language. This means that American legal opinions today are littered with weird French terms. Examples include plaintiff, defendant, tort, contract, crime, judge, attorney, counsel, court, verdict, party, appeal, evidence, and jury. These words are the everyday language of the American legal system. And they're all from the French, brought to you by William the Conqueror in 1066.

This means that when you read a legal opinion, you'll come across a lot of foreign-sounding words to describe the court system. You need to learn all of these words eventually; you should read cases with a legal dictionary nearby and should look up every word you don't know. But this section will give you a head start by introducing you to some of the most common words, many of which (but not all) are French in origin.

Types of Disputes and the Names of Participants

There are two basic kinds of legal disputes: civil and criminal. In a civil case, one person files a lawsuit against another asking the court to order the other side to pay him money or to do or stop doing something. An award of money is called "damages" and an order to do something or to refrain from doing something is called an "injunction." The person bringing the lawsuit is known as the "plaintiff" and the person sued is called the "defendant."

In criminal cases, there is no plaintiff and no lawsuit. The role of a plaintiff is occupied by a government prosecutor. Instead of filing a lawsuit (or equivalently, "suing" someone), the prosecutor files criminal "charges." Instead of asking for damages or an injunction, the prosecutor asks the court to punish the individual through either jail time or a fine. The government prosecutor is often referred to as "the state," "the prosecution," or simply "the government." The person charged is called the defendant, just like the person sued in a civil case.

In legal disputes, each party ordinarily is represented by a lawyer. Legal opinions use several different words for lawyers, includ-

ing “attorney” and “counsel.” There are some historical differences among these terms, but for the last century or so they have all meant the same thing. When a lawyer addresses a judge in court, she will always address the judge as “your honor,” just like lawyers do in the movies. In legal opinions, however, judges will usually refer to themselves as “the Court.”

Terms in Appellate Litigation

Most opinions that you read in law school are appellate opinions, which means that they decide the outcome of appeals. An “appeal” is a legal proceeding that considers whether another court’s legal decision was right or wrong. After a court has ruled for one side, the losing side may seek review of that decision by filing an appeal before a higher court. The original court is usually known as the trial court, because that’s where the trial occurs if there is one. The higher court is known as the appellate or appeals court, as it is the court that hears the appeal.

A single judge presides over trial court proceedings, but appellate cases are decided by panels of several judges. For example, in the federal court system, run by the United States government, a single trial judge known as a District Court judge oversees the trial stage. Cases can be appealed to the next higher court, the Court of Appeals, where cases are decided by panels of three judges known as Circuit Court judges. A side that loses before the Circuit Court can seek review of that decision at the United States Supreme Court. Supreme Court cases are decided by all nine judges. Supreme Court judges are called Justices instead of judges; there is one “Chief Justice” and the other eight are just plain “Justices” (technically they are “Associate Justices,” but everyone just calls them “Justices”).

During the proceedings before the higher court, the party that lost at the original court and is therefore filing the appeal is usually known as the “appellant.” The party that won in the lower court and must defend the lower court’s decision is known as the “appellee” (accent on the last syllable). Some older opinions may refer to the appellant as the “plaintiff in error” and the appellee as the “defendant

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in error.” Finally, some courts label an appeal as a “petition,” and require the losing party to petition the higher court for relief. In these cases, the party that lost before the lower court and is filing the petition for review is called the “petitioner.” The party that won before the lower court and is responding to the petition in the higher court is called the “respondent.”

Confused yet? You probably are, but don’t worry. You’ll read so many cases in the next few weeks that you’ll get used to all of this very soon.

III. WHAT YOU NEED TO LEARN FROM READING A CASE

Okay, so you’ve just read a case for class. You think you understand it, but you’re not sure if you learned what your professor wanted you to learn. Here is what professors want students to know after reading a case assigned for class:

Know the Facts

Law professors love the facts. When they call on students in class, they typically begin by asking students to state the facts of a particular case. Facts are important because law is often highly fact-sensitive, which is a fancy way of saying that the proper legal outcome depends on the exact details of what happened. If you don’t know the facts, you can’t really understand the case and can’t understand the law.

Most law students don’t appreciate the importance of the facts when they read a case. Students think, “I’m in law school, not fact school; I want to know what the law is, not just what happened in this one case.” But trust me: the facts are really important.²

² If you don’t believe me, you should take a look at a few law school exams. It turns out that the most common form of law school exam question presents a long description of a very particular set of facts. It then asks the student to “spot” and analyze the legal issues presented by those facts. These exam questions are known as “issue-spotters,” as they test the student’s ability to understand the facts and spot the legal issues they raise. As you might imagine, doing well on an issue-

Know the Specific Legal Arguments Made by the Parties

Lawsuits are disputes, and judges only issue opinions when two parties to a dispute disagree on a particular legal question. This means that legal opinions focus on resolving the parties' very specific disagreement. The lawyers, not the judges, take the lead role in framing the issues raised by a case.

In an appeal, for example, the lawyer for the appellant will articulate specific ways in which the lower court was wrong. The appellate court will then look at those arguments and either agree or disagree. (Now you can understand why people pay big bucks for top lawyers; the best lawyers are highly skilled at identifying and articulating their arguments to the court.) Because the lawyers take the lead role in framing the issues, you need to understand exactly what arguments the two sides were making.

Know the Disposition

The “disposition” of a case is the action the court took. It is often announced at the very end of the opinion. For example, an appeals court might “affirm” a lower court decision, upholding it, or it might “reverse” the decision, ruling for the other side. Alternatively, an appeals court might “vacate” the lower court decision, wiping the lower-court decision off the books, and then “remand” the case, sending it back to the lower court for further proceedings. For now, you should keep in mind that when a higher court “affirms” it means that the lower court had it right (in result, if not in reasoning). Words like “reverse,” “remand,” and “vacate” means that the higher court thought the lower court had it wrong.

Understand the Reasoning of the Majority Opinion

To understand the reasoning of an opinion, you should first identify the source of the law the judge applied. Some opinions interpret the Constitution, the founding charter of the government. Other cases

spotter requires developing a careful and nuanced understanding of the importance of the facts. The best way to prepare for that is to read the fact sections of your cases very carefully.

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interpret “statutes,” which is a fancy name for written laws passed by legislative bodies such as Congress. Still other cases interpret “the common law,” which is a term that usually refers to the body of prior case decisions that derive ultimately from pre-1776 English law that the Colonists brought over from England.³

In your first year, the opinions that you read in your Torts, Contracts, and Property classes will mostly interpret the common law. Opinions in Criminal Law mostly interpret either the common law or statutes. Finally, opinions in your Civil Procedure casebook will mostly interpret statutory law or the Constitution. The source of law is very important because American law follows a clear hierarchy. Constitutional rules trump statutory (statute-based) rules, and statutory rules trump common law rules.

After you have identified the source of law, you should next identify the method of reasoning that the court used to justify its decision. When a case is governed by a statute, for example, the court usually will simply follow what the statute says. The court’s role is narrow in such settings because the legislature has settled the law. Similarly, when past courts have already answered similar questions before, a court may conclude that it is required to reach a particular result because it is bound by the past precedents. This is an application of the judicial practice of “stare decisis,” an abbreviation of a Latin phrase meaning “That which has been already decided should remain settled.”

In other settings, courts may justify their decisions on public policy grounds. That is, they may pick the rule that they think is the best rule, and they may explain in the opinion why they think that rule is best. This is particularly likely in common law cases where judges are not bound by a statute or constitutional rule. Other courts will rely on morality, fairness, or notions of justice to justify

³ The phrase “common law” started being used about a thousand years ago to refer to laws that were common to all English citizens. Thus, the word “common” in the phrase “common law” means common in the sense of “shared by all,” not common in the sense of “not very special.” The “common law” was announced in judicial opinions. As a result, you will sometimes hear the phrase “common law” used to refer to areas of judge-made law as opposed to legislatively-made law.

their decisions. Many courts will mix and match, relying on several or even all of these justifications.

Understand the Significance of the Majority Opinion

Some opinions resolve the parties' legal dispute by announcing and applying a clear rule of law that is new to that particular case. That rule is known as the "holding" of the case. Holdings are often contrasted with "dicta" found in an opinion. Dicta refers to legal statements in the opinion not needed to resolve the dispute of the parties; the word is a pluralized abbreviation of the Latin phrase "obiter dictum," which means "a remark by the way."

When a court announces a clear holding, you should take a minute to think about how the court's rule would apply in other situations. During class, professors like to pose "hypotheticals," new sets of facts that are different from those found in the cases you have read. They do this for two reasons. First, it's hard to understand the significance of a legal rule unless you think about how it might apply to lots of different situations. A rule might look good in one setting, but another set of facts might reveal a major problem or ambiguity. Second, judges often reason by "analogy," which means a new case may be governed by an older case when the facts of the new case are similar to those of the older one. This raises the question, which are the legally relevant facts for this particular rule? The best way to evaluate this is to consider new sets of facts. You'll spend a lot of time doing this in class, and you can get a head start on your class discussions by asking the hypotheticals on your own before class begins.

Finally, you should accept that some opinions are vague. Sometimes a court won't explain its reasoning very well, and that forces us to try to figure out what the opinion means. You'll look for the holding of the case but become frustrated because you can't find one. It's not your fault; some opinions are written in a narrow way so that there is no clear holding, and others are just poorly reasoned or written. Rather than trying to fill in the ambiguity with false certainty, try embracing the ambiguity instead. One of the skills of top-flight lawyers is that they know what they don't know: they know

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when the law is unclear. Indeed, this skill of identifying when a problem is easy and when it is hard (in the sense of being unsettled or unresolved by the courts) is one of the keys to doing very well in law school. The best law students are the ones who recognize and identify these unsettled issues without pretending that they are easy.

Understand Any Concurring and/or Dissenting Opinions

You probably won't believe me at first, but concurrences and dissents are very important. You need to read them carefully. To understand why, you need to appreciate that law is man-made, and Anglo-American law has often been judge-made. Learning to "think like a lawyer" often means learning to think like a judge, which means learning how to evaluate which rules and explanations are strong and which are weak. Courts occasionally say things that are silly, wrongheaded, or confused, and you need to think independently about what judges say.

Concurring and dissenting opinions often do this work for you. Casebook authors edit out any unimportant concurrences and dissents to keep the opinions short. When concurrences and dissents appear in a casebook, it signals that they offer some valuable insights and raise important arguments. Disagreement between the majority opinion and concurring or dissenting opinions often frames the key issue raised by the case; to understand the case, you need to understand the arguments offered in concurring and dissenting opinions.

IV. WHY DO LAW PROFESSORS USE THE CASE METHOD?

I'll conclude by stepping back and explaining why law professors bother with the case method. Every law student quickly realizes that law school classes are very different from college classes. Your college professors probably stood at the podium and droned on while you sat back in your chair, safe in your cocoon. You're now starting law school, and it's very different. You're reading about actual cases, real-life disputes, and you're trying to learn about the law by picking up bits and pieces of it from what the opinions tell

you. Even weirder, your professors are asking you questions about those opinions, getting everyone to join in a discussion about them. Why the difference?, you may be wondering. Why do law schools use the case method at all?

I think there are two major reasons, one historical and the other practical.

The Historical Reason

The legal system that we have inherited from England is largely judge-focused. The judges have made the law what it is through their written opinions. To understand that law, we need to study the actual decisions that the judges have written. Further, we need to learn to look at law the way that judges look at law. In our system of government, judges can only announce the law when deciding real disputes: they can't just have a press conference and announce a set of legal rules. (This is sometimes referred to as the "case or controversy" requirement; a court has no power to decide an issue unless it is presented by an actual case or controversy before the court.) To look at the law the way that judges do, we need to study actual cases and controversies, just like the judges. In short, we study real cases and disputes because real cases and disputes historically have been the primary source of law.

The Practical Reason

A second reason professors use the case method is that it teaches an essential skill for practicing lawyers. Lawyers represent clients, and clients will want to know how laws apply to them. To advise a client, a lawyer needs to understand exactly how an abstract rule of law will apply to the very specific situations a client might encounter. This is more difficult than you might think, in part because a legal rule that sounds definite and clear in the abstract may prove murky in application. (For example, imagine you go to a public park and see a sign that says "No vehicles in the park." That plainly forbids an automobile, but what about bicycles, wheelchairs, toy automobiles? What about airplanes? Ambulances? Are these "vehicles" for the purpose of the rule or not?) As a result, good lawyers

How to Read a Legal Opinion

need a vivid imagination; they need to imagine how rules might apply, where they might be unclear, and where they might lead to unexpected outcomes. The case method and the frequent use of hypotheticals will help train your brain to think this way. Learning the law in light of concrete situations will help you deal with particular facts you'll encounter as a practicing lawyer.

Good luck!





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Life Cycle of a Law Case

LITIGATION STAGES AND STEPS

INTRODUCTION Civil practice and litigation procedure and practice are governed by statutes and court rules. These include federal and state statutes, the Federal Rules of Civil Procedure, state rules of civil procedure, local rules of courts at all levels, and judges' individual rules.

Throughout every stage of litigation, negotiations may and often take place. These may take place in the context of alternative dispute resolution options including arbitration, mediation, and party initiated and court ordered settlement discussions and through discussions at any time among the parties.

I. PRE-LITIGATION

- Considerations before deciding to initiate a case include: 1) Is there a cause of action (a legally sufficient, cognizable claim; is there a wrong for which relief can be granted); and 2) in what court should the case be brought (is there jurisdiction over the subject matter of the case and over the parties to the case; in what court system (federal or state) or particular court (Bankruptcy; Housing, Family) does the case belong; in federal court, further, is there a sufficient amount at stake and is the claim one under federal law); 3) in what venue or location should the case be brought (where did the events happen?) and
- Have opportunities for alternative resolution of the conflict been attempted.

II. INITIATING THE CASE - PLEADINGS

- Plaintiff files and serves a Complaint, which identifies the parties, includes a brief description of the facts of the conflict, lists the legal causes of actions, and includes a prayer for relief, which might include actual damages, punitive damages, attorneys' fees, and injunctive relief.

- Defendant serves and files the Answer. (Note that in some settings, Defendant may file a Motion to Dismiss the case before filing an Answer.) The Answer responds to the points stated and alleged in the Complaint (admits or denies them, or denies knowledge (I don't know)), typically contains affirmative defenses and counterclaims on behalf of the Defendant and may contain a prayer for relief.
- Plaintiff may file a Reply to Counterclaim(s) if asserted by the Defendant in the Answer.
- Defendant may file a Reply to Cross-claim(s) if asserted by Co-Defendants in the Answer.

III. MOTIONS - applications to the court for court-ordered relief. Motions may resolve the case; some motions are made for strategic reasons. Law cases are time consuming and costly. Motions may be made at the early stages of a case and throughout the progress of the litigation.

- Most common types of Motions:
 - Motions for immediate relief. Early in the case the plaintiff may move for a temporary restraining order or preliminary injunction to have the court order the defendant to stop certain actions or conduct until the case is resolved – such as creating a hazardous condition on plaintiff's land, violating plaintiff's trademark or copyright by selling fake products with plaintiff's trademark or copyright.
 - Address the pleadings. Example: Motion to Dismiss (the Complaint). This motion is made only by the Defendant and says there is no claim or cause of action asserted in the Complaint upon which relief can be granted, or there is a procedural/technical problem such as the case was brought too late (beyond the statute of limitations). If this motion is granted the case at the trial level is over; the granting of the motion may be appealed.
 - Motion for Summary Judgment. This motion may be made by either the Plaintiff or the Defendant and may be addressed to the pleadings or made after the initial stage of a case in litigation. It is often made after Discovery is over, and the parties have collected documents, testimony or other evidence. This motion says that taking the case in the light most favorable to the opposing party, the case can be decided as a matter of law on behalf of the party making the motion. The motion says there is no need to go further or to find more facts; rather, the case can be decided either based on the facts in the pleadings or the facts discovered at the time the motion is made. The court can decide this motion on behalf of either party, not only the party making the motion. If the court grants a Motion for Summary Judgment, the case is decided (this motion is called a Dispositive Motion) and the proceeding of the litigation ends there. The decision, however, is subject to appeal.

- Discovery Motions. Examples: 1) Motion to Compel Discovery. Discovery motions ask the court to help the parties obtain the information they need to pursue the legal claims of the lawsuit. Discovery demands (Interrogatories; Production of Documents; and Depositions) may require motions to obtain court enforced compliance. For example, if a party does not produce requested documents, the other party can make a Motion to Compel Production of Documents and the court can set a schedule for compliance with this demand. 2) Motion to prevent discovery because it is privileged (such as under the attorney-client privilege) or is not relevant or is unreasonably burdensome.
- Motion Practice
 - A major component of litigation may be involved in making motions. Generally, the elements of motion practice include: 1) the party making the motion (movant) serves motion papers consisting of a Notice of the motion, which provides information to the recipient party (the Respondent) as to when and where the motion will be heard, and the that is being relief sought; 2) possible Affirmations and Affidavits of attorneys, parties or witnesses in support of the motion; a Memorandum of Law in support of the motion that contains the cases, statutes, sometimes treatises, legal analysis, and conclusions of law; 3) the Respondent serves opposition papers consisting of Affirmations and Affidavits and a Memorandum of Law in opposition to motion; 4) the Movant may submit reply documents and a Reply Memorandum of Law; 5) the court may schedule Oral Argument on the Motion(s) and Reply or replies; and 6) the court issues a Decision (Opinion) and Order, which may be reported in State and Federal Reporters, official and unofficial case reports, and/or on LEXIS and Westlaw; Leading NYS and 2nd Circuit decisions are published in the daily *New York Law Journal*.

IV. **DISCOVERY** – this phase of the case is often conducted simultaneously with motion practice.

- Document discovery: notice for discovery and inspection (NYS); requests for production of documents (federal).
- Interrogatories: questions posed by each party to the other seeking information relevant to the factual support for the legal claims.
- Depositions (examinations of witnesses/parties before trial).
- Physical inspections.
- Discovery Practice: Parties serve discovery notices (or can be initiated by a court order). The notice tells when items must be produced, or when the event is to take place, and what or who must be produced. The other party (or non-party to whom notice plus a subpoena is directed) responds within the statutory time period.

- The court may schedule conferences to set a schedule for discovery or to review the status of the case.

V. TRIAL

- Note: at all stages of a case, negotiations to settle the case and resolve it through extra-judicial discussions may take place. Often, cases are settled, for example, right before trial is about to begin, when the parties may hope to maintain more control over the outcome by resolving the case outside of court.
- A trial may be a Jury trial or a Bench trial, which is a trial before only a judge.
- Trial Practice Steps:
 - Before trial the parties may file motions in limine, asking the court to decide whether certain evidence will be allowed at the trial.
 - If there will be a jury trial, then Jury Selection must take place. This includes a process (called Voir Dire) of questioning potential jurors and eliminating jurors who show they may not be able to be impartial in hearing and deciding the case.
 - Opening statements by first the plaintiff then the defendant. (These follow any pre-trial motions and, sometimes, judge directed settlement talks (negotiations)).
 - Plaintiff presents case: Plaintiff's attorney (or plaintiff on her or his own behalf, called proceeding *pro se* –, that is, without an attorney) examines witnesses (called direct examination for testimonial evidence) and introduces documents (and other evidence); Defendant cross-examines Plaintiff's witnesses; Plaintiff may re-cross examine witnesses; Both parties submit to the judge documents for authentication and admission as trial exhibits. If questions arise as to the admissibility of evidence or of testimony, for example, a party may request a show of proof or in-chambers review of an issue, and an adverse trial court decision that is critical to the ultimate outcome of the case may become the subject of an interlocutory appeal, which asks an appellate court to review an aspect of the case before the trial has concluded.
 - At the end of the plaintiff's case in a jury trial, the defendant may move for a judgment as a matter of law (or directed verdict), which is a request for an order from the presiding judge to the jury to return a particular verdict. Typically, the judge orders a directed verdict after finding that no reasonable jury could reach a decision to the contrary.
 - Defendant presents case: same protocol as with plaintiff's presentation of case.
 - Closing arguments by the Defendant and then the Plaintiff. In a jury trial, the judge asks the parties' lawyers to submit proposed instructions on the law (jury charge) to the jury, and the judge issues instructions to jury.

- Jury deliberations.
- Jury verdict or judge's decision in a bench trial. Attorneys then may make post-trial motions. For example, parties may make a Motion for a Judgment Notwithstanding the Verdict, which asks the judge following a civil jury trial to overrule the decision of a jury and reverse or amend its verdict.

VI. APPEAL (Appeal is optional; that is, the losing party at trial may, but does not have to appeal the case.)

- Purpose: The losing party may appeal to an appellate court to seek a reversal of a trial or lower appellate court order or judgment. There is typically appeal as of right to the next highest court above the trial court. Generally, in both the state and federal court structures, the appeal is from the trial court to the intermediate appellate court, to the highest appellate court.
- Appellate practice: The Record on Appeal is the complete record of the case (transcripts; documents; evidence; motions; decisions) from the trial level hearing of the case. Generally, no new evidence is allowed. The Appellant files a Notice of Appeal and an Appellate Brief and Record on Appeal (or joint Appendix in federal appeals) within statutory time limits. The Respondent (or Appellee) files Respondent's (or Appellee's) Brief in opposition to the appeal. The Appellant may file a Reply Brief. The Appellate Court holds Oral Argument.
- Once a case has been appealed to and heard by the highest appellate court that will hear the appeal, the highest appellate court issues a decision and order. The appellate court can affirm the lower court's decision (conclude that the lower court reached the correct result) or reverse the lower court's decision (where a higher court decides that the court one step below in the court structure reached the incorrect decision), and may remand back to the trial court part or all of the case for further proceedings.
- *Res Judicata* means that the case has been finally decided and there is no opportunity for any further legal action in this particular legal dispute. All appeals have been exhausted and there can be no more litigation between the same parties to the particular case on the particular issues of the case. (While there may be occasional exceptions to this doctrine, for the most part it serves purposes of judicial efficiency and finality.)

Guidelines for Case Briefing

A case brief is not a formal legal document. However, as a law student, "briefing" the cases you are reading for your courses will be very helpful to you both in class and later when you are outlining the course material and studying for your examinations. The best way to master case reading and analysis is to prepare case briefs of the cases you read and to take systematic and thorough notes of the discussions of the cases in class. The form of the case brief helps you organize case related information and refer to it easily.

There is not one way to brief a case. Many forms may be used with success. Your Elements textbook suggests one approach. The most important learning and study aid you should be working on in the early days of law school is developing the briefing form that works best for you. It must allow you to distill the important elements of each case quickly and accurately and it must provide you with sufficient information to make it useful in understanding the case, in following the discussion of the case in class, in answering questions about the case if called upon in class, in preparing an outline of the course, and in studying for the course's examination.

The basic outline of the briefs you prepare for the beginning Legal Writing classes is as follows:

1. **Case Heading**. Write out the full and proper citation of the case. The correct citation identifies the case and specifies where it may be found should you want to look up and read a more complete version of the case than is typically provided in your casebook, and it tells you important information about the decision, including the court that decided the case and when it was decided.
2. **Parties**. Identify and provide a very brief description of who sued whom. Who was the plaintiff, defendant, appellant, appellee?
3. **Procedural History and Outcome**. Most decisions you will read are from appellate courts. Include in the procedural history of a statement of how the case arrived at the appellate court whose opinion is now being read and analyzed. Include who won in the lower court, who is appealing and the outcome in this appeal.
4. **Facts**. Include only those facts or parts of the story or dispute of the case that are most important to the opinion you are briefing, the facts most likely to be important in using this case to predict the outcome of a similar controversy.
5. **Issue(s)**. The issue is a comprehensive articulation of the legal question or questions actually before the court presented in the context of the facts of the case. The issue should combine the legal question with some significant facts. When the court answers the question posed, in most instances it has decided the case. The party appealing may be complaining about an error of law that was made by the lower court. Yet, unless that is the primary issue

in the case, focus on the substantive legal question raised in the case, not the procedural issue or sub-issue.

6. **Holding**. The holding is the court's legal answer to the question posed in the issue but often is broader than the context from which the question arose. The holding is not the outcome on appeal. The outcome is who won and who lost. The holding is the court's resolution of the issue presented in broader terms than presented in the issue and the application of the rule of law that compelled the result, the decision, in this case. The holding answers the question posed by the issue with more than a simple "yes" or "no." The holding and rule may be the same or very close in some cases. Generally, the rule is the broader legal principle that supports and is derived from the holding. The language of the holding may be framed in the language of the court, although you should be able to state it in your own words as well. Note that particular language of the court does not become the holding simply because the judge might call it that.

7. **Reasoning**. The reasoning is the basis on which the court justifies and explains its decision. It may contain doctrine (the basis in law for the decision), and policy (other factors that may account for the decision).

8. **Notes, Dissents**. This section may be helpful in further explaining additional aspects of the case or in raising questions you want to remember.

437 F.Supp.3d 907
United States District Court, D. Colorado.

Becky MCCRAY, Plaintiff,
v.
LOCKHEED MARTIN CORPORATION, Defendant.

Case No. 1:19-cv-03298-DDD-NRN

|
Signed January 30, 2020

ORDER DENYING MOTION TO REMAND AND GRANTING MOTION TO DISMISS

[Daniel D. Domenico](#), United States District Judge

Plaintiff Becky McCray was an employee of Defendant Lockheed Martin Corporation. Attending a party on Lockheed's campus, she and a senior manager consumed alcohol, and the two rode off on the manager's motorcycle. While still on Lockheed's campus, the manager crashed the motorcycle. He died, and Ms. McCray sustained injuries. She now sues Lockheed, alleging state-law theories of tort liability all premised on the presence of alcohol at the party. Lockheed removed the case, invoking diversity jurisdiction. Before the Court are two motions: Ms. McCray's motion to remand (Doc. 19), which is **DENIED**; and Lockheed's motion to dismiss (Doc. 14), which is **GRANTED**.

PROCEDURAL HISTORY AND MOTION TO REMAND

[ed note: Ms. McCray filed this suit in the Colorado District Court for Denver County against Lockheed, Lockheed removed the action to federal court on diversity jurisdiction grounds, and Ms. McCray filed a motion to remand, in which she argues that Lockheed has shown neither complete diversity nor that the amount in controversy exceeds \$75,000].

“A corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). A corporation's “principal place of business, for diversity jurisdiction purposes, is its nerve center.” *Hertz Corp. v. Friend*, 559 U.S. 77, 130 S.Ct. 1181, 175 L.Ed.2d 1029 (2010). As Ms. McCray points out, the “burden of establishing subject matter jurisdiction is on the party asserting jurisdiction,” *Montoya v. Chao*, 296 F.3d 952, 955 (10th Cir. 2002) (citing *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994)), and when “challenged on allegations of jurisdictional facts, the parties must support their allegations by competent proof.” *Hertz Corp.*, 559 U.S. at 96–97, 130 S.Ct. 1181.

Ms. McCray is a citizen of Florida. Initially, she argued that Lockheed's “bare assertions,” contained within its notice of removal, do not establish that it is not also a citizen of Florida. (Doc. 19, at 5–6.)¹ Lockheed responded by supplying an affidavit and a document from the Colorado secretary of state showing that (1) it is incorporated in Maryland, and (2) the operations of all four of its main business segments—including those of Lockheed Martin Space, which operates on the campus at issue here—are subject to the approval, oversight, and authority of its corporate headquarters in Maryland. (See Docs. 26-1, 26-2.) In her reply, Ms. McCray concedes that “Lockheed's main incorporation is in Maryland, and it has provided sufficient evidence

that its ‘nerve center’ appears to be in Maryland,” but she maintains that “it nonetheless is also at home in Florida.” [because it was incorporated in Florida in the past].

* * *

Ms. McCray is wrong. Even were a corporation capable of having multiple states of incorporation, Ms. McCray has not controverted Lockheed's evidence that it is incorporated in Maryland only. . . . [I]t is immaterial that Lockheed, on its own or through other entities, does certain business in Florida. A “corporation's ‘nerve center,’ usually its main headquarters, is a single place.” *Hertz Corp.*, 559 U.S. at 93, 130 S.Ct. 1181. This is where “officers direct, control, and coordinate the corporation's activities.” *Id.* at 78, 130 S.Ct. 1181. As Lockheed has demonstrated, and Ms. McCray concedes, the relevant nerve center is Maryland because that is the location from whence its operations are directed.

Ms. McCray also initially argued that Lockheed failed to show that the amount in controversy exceeds \$75,000. This disingenuous position ignores her own representations made to the Colorado court stating that she sought a monetary judgment over \$100,000 (Doc. 1-2, at 3), and to this Court certifying “economic damages in the amount of \$1,169,437.44.” . . . The Court is satisfied the amount in controversy meets the jurisdictional requirements.

For these reasons, the Court finds it has subject matter jurisdiction over this case. Ms. McCray's motion to remand is denied, and the Court turns to the merits of the motion to dismiss.

ALLEGATIONS IN THE COMPLAINT

The following allegations are taken from Ms. McCray's Complaint (Doc. 6) and are treated as true for purposes of assessing the motion to dismiss. See *Wilson v. Montano*, 715 F.3d 847, 850 n.1 (10th Cir. 2013).

On May 13, 2017, Lockheed's employees, including Ms. McCray, participated in an “Employee Engagement Team” party, organized by the company, at the baseball fields and pavilions at Lockheed's campus in Jefferson County, Colorado. Lockheed has policies that prohibit alcoholic beverages on company property and at company-sponsored events. Despite those policies, there was an “unwritten rule” that Lockheed would not enforce the alcoholic beverage prohibition for parties like the one at issue here and would even “encourag[e] [its] workforce to get drunk at” them.

Lockheed did not serve alcohol at the party, but Lockheed's employees, supervisors, and managers provided it themselves, and many were drinking. While there, Ms. McCray interacted with a senior manager, Christopher Weigand, and the two of them consumed numerous alcoholic beverages. Mr. Weigand then invited Ms. McCray to ride with him on his motorcycle, and she accepted. With Mr. Weigand driving, the two sped away from the party down Cemetery Road, a private street on Lockheed's property. Mr. Weigand lost control, the motorcycle crashed into a ditch, and both passengers were ejected. Mr. Weigand died at the scene. Ms. McCray suffered serious injuries but survived.

Ms. McCray now brings claims against Lockheed for premises liability, negligence, and negligent supervision—all based on Lockheed's alleged unreasonable failure “to protect against the dangerous conditions” created by permitting alcohol at the party and failure “to enforce the no alcohol policy[] by encouraging [its] workforce to get drunk at the [p]arty.”

MOTION TO DISMISS

Lockheed moves to dismiss on a single ground: According to Lockheed, Ms. McCray's causes of action . . . are barred by the protections of Colorado's Dram Shop Act. In relevant part, that Act reads:

(1) The general assembly hereby finds, determines, and declares that this section shall be interpreted so that any common law cause of action against a vendor of alcohol beverages is abolished and that in certain cases the consumption of alcohol beverages rather than the sale, service, or provision thereof is the proximate cause of injuries or damages inflicted upon another by an intoxicated person, except as otherwise provided in this section....

(4)(a) No social host who furnishes any alcohol beverage is civilly liable to any injured individual or his or her estate for any injury to the individual or damage to any property suffered, including any action for wrongful death, because of the intoxication of any person due to the consumption of such alcohol beverages, except when:

(I) It is proven that the social host knowingly served any alcohol beverage to the person who was under the age of twenty-one years or knowingly provided the person under the age of twenty-one a place to consume an alcoholic beverage; and

(II) The civil action is commenced within one year after the service.

[Colo. Rev. Stat. § 44-3-801](#).³ In diversity cases, federal courts apply state law and must defer to the decisions of the controlling state's highest court. *Kokins v. Teleflex, Inc.*, 621 F.3d 1290, 1295 (10th Cir. 2010). . . .

Lockheed argues, under the circumstances alleged here, that it is a “social host” within the meaning of the Act and so is protected from liability for injuries caused by its guest, Mr. Weigand. Ms. McCray responds that Lockheed is not a protected social host because the company did not furnish alcohol to anyone at the party.

As a matter of first principles, Ms. McCray has a point. The operative text in the Act does indeed suggest that it only protects a “social host who furnishes any alcohol beverage.” And the allegations here do not say that Lockheed purchased, served, or otherwise directly “furnished” alcohol at the party. Lockheed, though, argues that failing to treat it as a social host under the Act would lead to the bizarre result that it (and other party hosts) *would not* be liable if they had actively supplied alcohol to someone who gets intoxicated and causes injury, but *would* be liable if someone else brought the alcohol.

Though the Act itself does not define either “social host” or “furnish,” the Court is convinced that Colorado's courts would agree with Lockheed that the Act applies here.

* * *

[Ed note: Court analyzes prior cases to interpret the statute as protecting Lockheed].

The limited circumstances outlined in the Act provide “the only basis for a claim of negligently selling, serving, or providing alcohol beverages, because in all other cases it is the consumption of alcohol beverages that is the proximate cause of the injury caused by the intoxicated person.” *Rojas*, 68 P.3d at 592–93. Colorado's courts have interpreted the Act to generally prevent plaintiffs from suing the host of a party “for injury to a third person because of the intoxication of a guest.” *Forrest*, 833 P.2d at 874. Since that is what the Complaint here seeks to do, it must be dismissed.

CONCLUSION

Ms. McCray's motion to remand (Doc. 19) is **DENIED**. Lockheed's motion to dismiss (Doc. 14) is **GRANTED**. The Complaint (Doc. 6) is **DISMISSED WITH PREJUDICE**. This case shall be closed.