Liability of Liquor Suppliers In California: A Return To the Common Law

This note traces the circular evolution of the civil liability of alcohol suppliers in California. It discusses the law's development from common law notions of non-liability thhrough the judicial implementation of liability in Vesely v. Sager and Coulter v. Superior Court of San Mateo County. It then discusses the contents of S.B. 1645 and S.B. 1175 and the return to common law notions of non-liability in California.

The California Legislature recently amended California law to provide that a plaintiff cannot hold a supplier of alcoholic beverages civilly liable for any injury resulting from the intoxication of a guest or patron unless that person is obviously intoxicated *and* a minor.[1] These amendments represent the legislature's direct response to a recent California Supreme Court decision which held that a plaintiff could hold social suppliers of liquor to obviously intoxicated individuals civilly liable for subsequent injuries inflicted by those guests on innocent third persons.[2]

Beginning with *Vesely v. Sager,*[3] the Court altered the common law in California by holding that *commercial* suppliers were liable for damages to third parties when they sold liquor to an obviously intoxicated person when it was foreseeable that the intoxicated person would attempt to drive. Then, in *Coulter v. Superior Court,*[4] the Court expanded its definition of suppliers to include the *social* host. *Coulter* stimulated the legislature's passage of S.B. 1645 and S.B. 1175.[5] As a result, the legislation insu-

[1] 1978 Cal. Stats. 3244, ch. 929 (West), and 1978 Cal. Stats. 3245, ch. 930 (Est). Hereinafter the former will be referred to as S.B. 1745, and the latter as S.B. 1175.

[2] 1978 Cal. Stats. 3244, ch. 929, §§ 1(c), 2(b).

[3] 5 Cal. 3d 153, 486 P.2d 153, 95 Cal. Rptr. 623 (1971).

[4] 21 Cal. 3d 144, 577 P.2d 669, 145 Cal. Rptr. 534, (1978).

[5] *Group Forums to Seek Liquor Law Repeal,* San Bernardino Sun Telegram,

lates suppliers from third party liability for injuries resulting from the intoxication of a guest or patron, and returns California to common law notion of nonliability.

I. The Historical Perspective

Under traditional common law principles, the courts never imposed civil liability on suppliers of alcoholic beverages for *any* injury to *any* person resulting from the intoxication of a guest or patron.[6] Plaintiffs in these cases were unable to establish proximate cause because the court viewed consumption, and not sale or supply of alcoholic beverages, as the proximate cause of injuries.[7] The court dismissed each case since no proximate cause was ever established.[8]

The number of persons injured by intoxicated individuals increased sharply with the advent of high speed automobiles. These injured third persons began seeking methods to alter or circumvent the proximate cause barrier to recovery from the deep pockets of tavern owners.[9] The major tools of injured third persons in their attempts to attach liability to suppliers were Dram Shop statutes and Alcoholic Beverage Control laws.[10] Virtually every state still has some sort of active Dram Shop or Alcoholic Beverage Control legislation.[11]

May 3, 1977, § B 1 1, col. 2. *See* note 4 *supra.*

[6] Kingen v. Weyant, 148 Cal. App.2d 656, 660, 307 P.2d 369, 372 (4th Dist. 1957).

[7] *E.g.*, Cole v. Rush, 45 Cal. 2d 345, 289 P.2d 450 (1955), where the Cal. Supreme Court, per Schauer, J., sustained a demurrer granted by the Superior Court to defendants on the grounds that plaintiff's complaint failed to state facts sufficient to constitute a cause of action. Plaintiff's complaint for wrongful death alleged that the sale of intoxicating liquor to plaintiff's decedent, who was already drunk, was the proximate cause of his subsequent death in a fistfight outside the bar premises. The court dismissed the complaint without leave to amend, reasoning that:

> The common law gives not remedy for injury or death following the mere sale of liquor to the ordinary man, either on the theory that it is a direct wrong, or on the ground that it is negligence, which imposes a legal liability on the seller for damages resulting from the intoxication.

Id. at 348, 289 P.2d at 453.

[8] *E.g.*, Fleckner v. Dionne, 94 Cal. App. 2d 246, 248, 210 P.2d 530, 532 (1st Dist. 1949).

[9] Ricci, *Dram Shop Liability—A Judicial Response,* 57 Calif. L. Rev. 995, 999 (1969).

[10] Hagglund & Arthur, *Common Law Liquor Liability,* 7 Forum 73, 75 (1971).

[11] *Id.*

Dram Shop statutes[12] establish a *new* civil cause of action, *vis a vis* common law negligence, against suppliers for damages resulting from intoxication. They are common in jurisdictions outside California. Most of these statutes impose strict liability and, thereby, totally circumvent the proximate cause obstacle to civil recovery.[13] Because of the harsh results which often develop in the application of strict liability to social suppliers, courts in Dram Shop jurisdictions generally limit the law's application to *commercial* suppliers.[14] There is a recent trend, however, extending liability to *social* as well as commercial suppliers under Dram Shop strict liability.[15]

Alcoholic Beverage Control (hereinafter, ABC) laws[16] establish criminal sanctions for, among other things, furnishing liquor to minors or to persons already obviously intoxicated. The distribution of liquor in California is controlled by this type of statutory scheme.[17] While violation of a Dram Shop statute results in the imposition of strict liability against the violator,[18] violation of an ABC statute results only in facilitating the showing of a prima facie case for negligence. This is accomplished through use of the negligence per se doctrine.[19]

Under traditional notions of negligence per se, the failure of a person to exercise due care is presumed if that person violates a statute while inflicting injury upon another.[20] If the person in-

---

[12] *E.g.*, ORE. REV. STAT. § 30.730 (1974); MINN. STAT. ANN. § 340.95 (West 1972).

[13] At early common law, consumption rather than sale or supply of alcoholic beverages was the proximate cause of injuries resulting from intoxication. *See* text accompanying notes 6-7 *supra*. However, to hold suppliers liable under most Dram Shop laws, plaintiffs need only show that the third person was drunk and was provided liquor from the particular supplier in question. Plaintiffs do not need to show a specific casual relationship between the supply of liquor and the injury producing conduct. Sworski v. Coleman, 208 Minn. 43, 293 N.W. 297 (1940).

[14] For a discussion of the problems in applying Dram Shop laws to social suppliers, see Hagglund & Authur, *supra* note 10. These problems do not concern California as it has no Dram Shop legislation.

[15] Ross v. Ross, 294 Minn. 115, 200 N.W. 2d 149 (1972).

[16] *See, e.g.*, CAL. BUS. & PROF. CODE, § 23000 (West 1964).

[17] *Id.*

[18] *See* note 13 *supra*.

[19] The prima facie case for negligence consists of five elements: duty, breach, proximate cause, cause-in-fact, and damagess. The violation of a criminal statute can, under the proper circumstances, create a presumption of the duty and breach element of the prima face case. California codifies the negligence per se doctrine in CAL. EVID. CODE § 669 (West 1964).

[20] *Id.* § 669 (West 1964).

jured is a member of the class sought to be protected by the statute, and the injury is of a nature designed to be prevented by the statute, there arises a rebuttable presumption that two of the elements of the prima facie case for negligence, duty and breach, exist.[21] Thus, in theory, a finding that a supplier violated an ABC statute by selling liquor to an obviously intoxicated person who then injures a third person, creates a rebuttable presumption of duty and breach. This is because the injured third person is a member of the class sought to be protected by the ABC statues, and the injury inflicted by a drunk person is of the type designed to be prevented by them.[22]

The availability of negligence per se, however, has no effect on the necessity of proving the remainder of the prima facie case.[23] So long as the California courts viewed consumption of liquor as the pproximate cause of injuries resulting from intoxication,[24] any theory facilitating the establishment of duty and breach was insufficient to promote recovery by plaintiffs. Without proof of proximate causation, the plaintiff could never establish liability against a supplier-defendant.

Vesely v. Sager was the first California case to allow a plaintiff to recover from a commercial supplier of alcoholic beverages for injuries inflicted by a drunken patron. *Vesely* made two significant changes in California law. First and foremost, *Vesely* altered the proximate cause analysis used at common law.[25] Second, the Court shifted its primary area of inquiry in these cases from proximate causation to duty. The crucial issue became whether or not the supplier of liquor owed a duty to third persons who might be injured by an intoxicated customer.[26]

At common law, consumption of liquor was considered the proximate cause of injuries sustained as a result of a patron's

---

[21] *Id.*

[22] For example, in Coulter v. Super. Ct., 21 Cal. 3d 144, 577 P.2d 153, 145 Cal. Rptr. 534 (1978), the public was viewed as the class sought to be protected by CAL. BUS. & PROF. CODE § 25602 (West 1964). and injuries inflicted by an intoxicated individual on a third person were of the type sought to be prevented by the statute. Coulter v. Super. Ct., 21 Cal. 3d at 153, Ct. 145 Cal. Rptr. at 538, Ct. 557 P.2d at 673. The Court justified this finding by citing CAL. BUS. & PROF. CODE § 23001 (West 1964): "It is hereby declared that the matter of this division (which includes § 25602) involves in the highest degree the economic, social, and moral well-being and the safety of the state and of all its people."

[23] Proximate cause, cause-in-fact, and damages must still be shown.

[24] *See* text accompanying note 7 *supra.*

[25] Vesely v. Sager, 5 Cal. 3d 153, 157, 486 P.2d 153, 155, 95 Cal. Rptr. 623, 625 (1971).

[26] *Id.* at 164, 486 P.2d at 159. 95 Cal. Rptr. at 631.

intoxication.[27] In *Vesely,* the Court concluded that *furnishing* alcoholic beverages to an obviously intoxicated person could be the proximate cause of injures to third persons. The Court found that consumption, intoxication, and injury-producing conduct could, under proper circumstances, be foreseeable intervening causes between the supply of liquor and the resulting injury to a third person.[28] The test is whether the negligence of the supplier is a substantial factor in causing the harm. Foreseeable intervening acts, such as the consumption of supplied alcohol, do not destroy the plaintiff's ability to prove proximate cause. These determinations are made from the facts in each particular case.[29]

After determining the proximate cause issue, the Court considered whether the commercial supplier owed a duty of due care to third persons to refrain from suppplying liquor to patrons who are obviously intoxicated. The Court used the negligence per se doctrine to hold that a violation of California Business and Professions Code section 25602 established a presumption of duty and breach.[30] The Court found that the public was the class sought to be protected by the statute, and that injuries inflicted by an intoxicated individual upon a third person were of the type sought to be prevented by the statute.[31] Thus, in *Vesely*, the supplier's duty, as defined in California Business and Professions Code section 25602, was to refrain from selling liquor to an individual who was obviously intoxicated.

Vesely left two questions unresolved. First, could a more rigid duty be imposed upon commercial suppliers than that provided

---

[27] *See* text accompanying note 7 *supra.*

[28] [A]n actor may be liable for his negligence if his negligence is a substantial factor in causing an injury, and he is not relieved of liability because of the intervening act of a third person if such act was reasonably foreseeable at the time of his negligent conduct." Vesely v. Sager, 5 Cal. 3d 153, 163, 486 P.2d 153, 158, 95 Cal. Rptr. 623, 630 (1971).

> If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious or criminal does not prevent the actor from being liable for harm caused thereby.

RESTATEMENT (SECOND) OF TORTS § 449 (1965). It is clear that if serving a drink to an obviously intoxicated person can be a negligent act, then consumption of that drink is a foreseeable intervening act. Vesely v. Sager, 5 Cal. 3d at 164, 486 P.2d at 158, 95 Cal. Rptr. at 630.

[29] Vesely v. Sager, 5 Cal. 3d 153, 486 P.2d 153, 95 Cal. Rptr. 623 (1971).

[30] *Id.* at 164, 486 P.2d at 159, 95 Cal. Rptr. at 631.

[31] *Id.* at 165, 486 P.2d at 159, 95 Cal. Rptr. at 631. *See* text accompanying notes 19-22 *supra.*

by California Business and Professions Code section 25602?[32] Second, would the Court use an analysis similar to that followed in *Vesely* to impose a liability on *social* suppliers of alcoholic beverages?[33] The *Coulter* decision answered the former inferentially, and the latter directly.

Coulter v. Superior Court involved a person who became obviously intoxicated at a defendant's social gathering, was served additional liquor, and attempted to drive home.[34] Plaintiff was a passenger in the car and was injured when it collided with roadside abutments.[35] The trial court granted defendant's demurrer on the grounds that plaintiff's complaint failed to state a cause of action. The California Supreme Court overruled the trial court and held that a social supplier of alcoholic beverages to an obviously intoxicated guest may be liable for injuries inflicted by that guest upon an innocent third person.[36]

The Court in *Coulter* used two theories to impose liability on social suppliers. First, the Court interpreted California Business and Professions Code section 25602 to apply to *all* suppliers of alcoholic beverages, whether commercial or social.[37] Next, the Court recognized a negligence cause action, independent of the statute, by specifically determining that traditional notions of duty should be applied in cases such as *Coulter*.[38]

In extending California Business and Professions Code section 25602 to all suppliers, the Court had to determine the intent of the California Legislature. It found that the legislature intended that the courts liberally construe the Business and Professions Code.[39] California Business and Professions Code section 23001

---

[32] Duty based on the violation of a statute is necessarily rigidly defined. The duty to be observed is to conduct one's affairs so as not to violate the statute. Violation of the statute raises the rebuttable presumption of breach of the duty imposed by the terms of the statute. To find a broader duty would require the imposition of a duty based on more flexible common law notions of duty as discussed in the text accompanying note 52 *infra*.

[33] The Court in *Vesely* expressly declined to consider this issue. Vesely v. Sager, 5 Cal. 3d 153, 157, 486 P.2d 153, 155, 95 Cal. Rptr. 623, 625 (1971).

[34] Coulter v. Super. Ct, 21 Cal. 3d 144, 148, 577 P.2d 669, 671, 145 Cal. Rptr. 534, 536 (1978).

[35] *Id.* at 147, 486 P.2d at 671, 145 Cal. Rptr. at 534.

[36] "[A] social host who furnishes alcoholic beverages to an obviously intoxicated person, under circumstances that create a reasonable foreseeable risk of harm to others, may be held legally accountable to those third persons who are injured when that harm occurs." *Id.* at 147, 577 P.2d at 670, 145 Cal. Rptr. at 535.

[37] *Id.* at 150, 577 P.2d at 672, 145 Cal. Rptr. at 537.

[38] *Id.* at 152, 577 P.2d at 674, 145 Cal. Rptr. at 538.

[39] *Id.* at 151, 577 P.2d at 672, 145 Cal. Rptr. at 538.

states so expressly.[40] Next, the Court noted the legislature's failure to act when put on notice by the Court's express refusal to consider the question of social host liability in *Vesely*. The Court viewed that inactivity as highly relevant to the issue of legislative intent in the area.[41]

The Court also considered past interpretation of similar language found in different sections of the Business and Professions Code. It relied heavily on the appellate court analysis in *Coffman v. Kennedy*.[42] The *Coffman* court reviewed cases from other jurisdictions and stated, in dicta, that the term "person," as used in California Business and Professions Code section 25602 included social hosts.

The Court also analyzed the facts in *Coulter* with regard to its landmark holding in *Rowland v. Christian*,[43] and determined that common law notions of duty also applied to suppliers of alcoholic beverages.[44] In *Rowland*, the California Supreme Court identified the factors which trial courts should consider in determining the existence of a duty to third persons in any particular case. These factors included the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered any injury at all, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty of due care, and the availability and cost of insurance.[45] In *Coulter*, the Court reasoned that the danger resulting from defendant's acts in furnishing liquor to an obviously drunk guest far outweighed any dampened spirit of convivality resulting from a rule imposing a duty not to provide liquor to

---

[40] "It is hereby declared that the subject matter of this division involves in the highest degree the economic, social, and moral well-being and the safety of the State and of all its people. All provisions of this division shall be liberally construed for the accomplishment of these purposes." CAL. BUS. & PROF. CODE § 23001 (West 1964).

[41] "We think of it some, but not controlling significance that, following *Vesely*, the Legislature has failed to amend section 25602 to exclude . . . liability [of social hosts]." Coulter v. Super. Ct., 21 Cal. 3d 144, 151, 577 P.2d 669, 673, 145 Cal. Rptr. 534, 538 (1978).

[42] Coffman v. Kennedy, 74 Cal. App. 3d 28, 36-37, 141 Cal. Rptr. 267, 272 (1977).

[43] Rowland v. Christian, 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968).

[44] Coulter v. Superior Court, 21 Cal. 3d 144, 152, 577 P.2d 669, 673, 145 Cal. Rptr. 534, 538 (1978).

[45] Rowland v. Christian 69 Cal. 2d 108, 113, 443 P.2d 561, 564, 70 Cal. Rptr. 97, 100 (1968).

persons who are already obviously intoxicated.[46]

Coulter resolved any doubt about the direction of the California Supreme Court in the area of imposing liability for injuries inflicted by drunken patrons or guests. The Court acknowledged a societal trend toward increasingly severe and frequent injuries to third persons by drunk individuals.[47] It then attempted to alter that trend by imposing increasingly severe sanctions against the suppliers of liquor.

The history is clear. First, the use of Business and Professions Code violations to establish duty and brreach for negligence facilitated changes in common law.[48] Then, the Court's alteration of common law proximate causation principles facilitated civil recovery.[49] Finally, the Court used traditional notions of duty to eliminate the necessity of showing an ABC statute violation in order to establish duty and breach.[50]

If the trend was followed, and the frequency and severity of injuries to third persons did not decrease after *Coulter,* the Court's next logical step would have been to impose a more rigid jduty upon suppliers. The Court would have required suppliers to further supervise the level of consumption of patrons or guests. The duty currently imposed upon suppliers is to conduct one's affairs so as not to violate California Business and Professions Code section 25602. Violation of the statute raises a rebuttable presumption of breach of the rigid duty not to supply liquor to obviously intoxicated patrons or guests.[51] To find a broader duty, the Court would have to impose more flexible common law notions.[52] The Court seemed to indicate its willingness to impose this broader duty by recognizing the theoretical apparatus necessary for such a move.

There were two main problems with the analysis used by the California Supreme Court in *Coulter.* First, could the Court consistently apply the standard of care described in *Coulter?* Second, would extending the liability of suppliers actually result in a decrease in the number and severity of injuies to third persons? The answer to these questions was then, and remains, unclear.

---

[46] Coulter v. Super. Ct., 21 Cal. 3d 144, 154, 577 P.2d 669, 675 Cal. Rptr. 534, 539 (1978).

[47] *Id.*

[48] *See* text accompanying notes 19-21 *supra.*

[49] *See* text accompanying note 27 *supra.*

[50] *See* text accompanying note 35 *supra.*

[51] *See* text accompanying notes 19-21 *supra.*

[52] *See* note 32 *supra.*

Under the *Coulter* scheme, in order for a court to hold a supplier of alcoholic beverages liable for third party injuries inflicted by intoxicated guests or patrons, the supplier must have furnished liquor to an *obviously intoxicated* individual under conditions which would create a reasonably foreseeable risk of harm to others.[53] There are problems, however, with the definition of the term, "obviously intoxicated." According to the Court, when a person exhibits the outward manifestations commonly associated with intoxications, such as slurred speech, that a person is obviously intixicated.[54] The Court utilized the "obviously intoxicated" standard as it appears in California Business & Professions Code section 25602,[55] stating that the courts have experienced no discernible difficulty in applying it.[56]

This may be true when the issue involved only a misdemeanor violation. The interpretation might have been more difficult, however, in a civil setting where the determination involved people's lives and livelihoods. The standard of care adopted by the Court was ambiguous and fraught with potential for inconsistent application. In fact, the term was open to broad interpretation which would have resulted in increased litigation to clarify its exact meaning. The courts could have defined "obvious intoxication" to mean something quite different and distinct from that currently employed in criminal cases.[57] Such definitional dychotomies serve only to increase confusion and court overloads.

The more important question, however, was whether the *Coulter* scheme for imposing liability on suppliers would have effectively decreased the number and severity of injuries caused by intoxicated individuals. None of the increasingly severe sanctions imposed by the Court[58] prior to *Coulter* had worked. This failure provided tthe major stimulus for the *Coulter* decision.[59] If

---

[53] Coulter v. Super. Ct., 21 Cal. 3d 144, 152-153, 577 P.2d 669, 673, 145 Cal. Rptr. 534, 538 (1978).

[54] *Id.* at 155, 577 P.2d at 675, 145 Cal. Rptr. at 540.

[55] Every person who sells, furnishes, gives or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor. CAL. BUS. & PROF. CODE § 25602 (West 1964). This language remains unaltered in S.B. 1645. *See* note 1 *supra.*

[56] Coulter v. Super. Ct., 21 Cal. 3d 144, 155, 577 P.2d 669, 675, 145 Cal. Rptr. 534, 540 (1978).

[57] According to the Court, when a person exhibits the outward manifestations commonly associated with intoxication, such as slurred speech, that person is obviously intoxicated. *Id.* at 154, 577 P.2d at 675, 145 Cal. Rptr. at 539.

[58] *See* note 48-50 *supra.*

[59] This rationale is implicit in the Court's discussion of the severity of drunk

a substantial decrease in such injuries *were* to result from *Coulter,* one could argue that the litigation required to clarify the decision would be a prudent allocation of scarce judicial resources.

Vesely and *Coulter* totally reversed the common law in California regarding the potential liability of suppliers of alcoholic beverages to persons who are obviously intoxicated for injuries inflicted upon third persons. Not only could injured third persons recover from suppliers of liquor to drunk patrons or guests, but it was becoming increasingly easy to do so. The California Legislature, however, totally abrogated the Court's activity in the area of supplier's liability to third persons by enacting S.B. 1645 and S.B. 1175. The result was a return to the common law notions of non-liabililty.

II. The Legislative Response

The California Legislature enacted S.B. 1645 and S.B. 1175 specifically to reverse the Supreme Court's activity in the area of supplier liability to third persons. The legislature had grappled with the problem of supplier liability since *Vesely.* A few very vocal organizations opposed altering *Vesely.*[60] Their efforts in preventing any alteration of its holding were very successful.

Then, *Coulter* imposed civil liability on *social* hosts for the acts of their intoxicated guests. Previously, social hosts enjoyed immunity from any liability. As the general public became increasingly aware of the devastating potential of the *Coulter* decision, the time became ripe for legislative action.

S.B. 1645[61] made sweeping changes in California Business and

---

driving problems throughout our society. Coulter v. Super. Ct., 21 Cal. 3d 144, 154, 577 P.2d 669, 675, 145 Cal. Rptr. 534, 539 (1978).

[60] California State Assembly Committee on Judiciary Report 1977-78 Reg. Sess., S.B. 1645 (1978).

[61] 1978 Cal. Stats. 3244, ch. 929, § 1 states:

> S.B. 1645: SECTION 1. Section 25602 of the Business & Professions Code is amended to read:
>
> 25602. (a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor.
>
> (b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to ay injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.
>
> (c) The Legislature hereby declares that this section shall be

Professions Code section 25602. While it remains a misdemeanor for any person to sell or give liquor to an individual who is obviously intoxicated, no civil liability can attach from the violation. Additionally, the legislature mandated a return to the proximate cause analysis employed prior to *Vesely*.[62] Under this analysis consumption of alcohol, rather than sale or supply, is viewed as the proximate cause of any injuries resulting from intoxication.[63] As a result, there is no possibility for recovery based upon a negligence claim because a plaintiff, by law, cannot establish proximate cause in alcohol supply cases.

S.B. 1645 also amended California Civil Code section 1714[64] by adding two sub-paragraphs. One reiterates the legislature's intent to return to the pre-*Vesely* proximate cause analysis.[65] The other states that a court cannot hold a social host liable for any third person injury inflicted by an intoxicated guest who received liquor from the social host.[66]

---

interpreted so that the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153), Bernhard v. Harrah's Club (16 Cal.3d 313) and Coulter v. Superior Court (21 Cal.2d 144) be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages as the proximate cause of injuries inflicted upon by an intoxicated person.

[62] *Id.* § 1(c).

[63] *See* text accompanying notes 6-7 *supra*.

[64] 1978 Cal. Stats. 3244, ch. 929, § 2 states:

> SECTION 2. Section 1714 of the Civil Code is amended to read:
>
> 1714. (a) Every one is responsible, not only for the result of his willful acts, but also for any injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.
>
> (b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153), Bernhard v. Harrah's Club (16 Cal.3d 313), and Coulter v. Superior Court (21 Cal.3d 144) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.
>
> (c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

[65] *Id.* § 2(b).

[66] *Id.* § 2(c).

The introduction of S.B. 1645 drew widespread comment from many special interest groups. The major supporters of the bill were restaurant and bar owner associations and insurance companies.[67] The major opponents of the bill were the California Trial Lawyers Association and various church groups.[68]

Proponents of S.B. 1645 argued that it is in the best interest of California to maintain a vital restaurant and bar industry absent strong countervailing arguments. The cloud of judicially created civil liability was having a disastrous effect on the restaurant and bar industry.[69] Insurance premiums of commercial suppliers of alcohol had already skyrocketed despite the fact maximum coverage amounts remained constant or diminished.[70] Many restaurant and bar owner groups were predicting the demise of the industry.[71]

Proponents also argued that *Vesely* and *Coulter* removed responsibility from the individual drinker, and placed that responsibility on the supplier.[72] They conceded that the bartender has legal and moral responsibilities not to serve liquor to a drunken patron.[73] This is the design and effect of California Business and Professions Code section 25602. They felt, however, that holding suppliers liable for acts of persons in an intoxicated state traversed the limits of responsibility.[74]

---

[67] *See* notes 48-50 *supra.*

[68] *Id.*

[69] Letter from Carl W. Swenson, President of Carl N. Swenson Co., Inc. to California State Sen. Ruben S. Ayala (May 25, 1978) (on file at U.C. Davis L. Rev.).

[70] It is clear that the rrstaurant and liquor industries, which are large ones in California, were being severely threatened by the holdings of *Vesely* and *Coulter.* Adequate insurance is not available for commercial suppliers of alcohol. For example, Carl N. Swenson Co. repord that the maximum coverage their insurance carrier would allow was $500,000. Premiums for this clearly inadequate amount of coverage have skyrocketed, too. *Id.* A small hotel in Bel Aire, California, reported that since 1973, its insurance premium increased 22 times, from $1,300 to $29,000 per year, despite nevee having been accused of a statutory violation in 32 years. Letter from W.E. Couch, Director, Insurance and Employee Benefits Department of the California Chamber of Commerce, to California State Sen. Ruben S. Ayala (Aug. 21, 1978) (on file at U.C. Davis L. Rev.).

[71] *Group Forums to Seek Liquor Liability Law Repeal,* San Bernardino Sun Telegram, May 3, 1977, § B at 1, col. 2.

[72] Letter from Abe Harris, Executive Director, California Licensed Beverage Association, to the Oakland Tribune, (on file at U.C. Davis L. Rev.).

[73] *Id.*

[74] As Sen. Ruben Ayala, sponsor of S.B. 1645 has stated, "Drinkers are adults, and adults must take some responsibility for their actions." *Group Forums to Seek Liquor Law Repeal,* San Bernardino Sun Telegram, May 3, 1977, § B at 1, col. 2.

Opponents of S.B. 1645 argued that the deterrent effect on the imposition of civil liability is vital to the reduction of drunk driving injuries in California.[75] They felt that the misdemeanor criminal sanctions imposed by California Business and Professions Code section 25602 were insufficient to reduce the number and severity of drunk driving injuries.[76] Opponents also felt that the liquor industry should bear the cost of injuries caused by persons who were served liquor while obviously intoxicated. At least suppliers could obtain insurance and pass on their costs to consumers by increasing the price of alcoholic beverages. Alternatively, they could stop serving alcohol.

S.B. 1175 was initially a comprehensive alternative to S.B. 1645. A conference committee altered it, however, in order to appease the vocal critics of S.B. 1645. S.B. 1175[77] adds three additional subsections to California Business and Professions

---

[75] Letter from Bert Pines, Los Angeles City Attorney, to California State Sen. Ruben S. Ayala (March 31, 1978) (on file at U.C. Davis Law Rev.).

[76] *Id.*

[77] 1978 Cal. Stats. 3245, ch. 930 states:

> S.B. 1175: SECTION 1. Section 25602.1 is added to the Business and Professions Code, to read:
>
> 25602.1. Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed pursuant to Section 23300 who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage to any obviously intoxicated minor where the furnishing, sale or giving os such beverage to the minor is the proximate cause of personal injury or death sustained by such person.
>
> SECTION 2. Section 25602.2 is added to the Business and Professions Code, to read:
>
> 25602.2. The director may bring an action to enjoin a violation or the threatened violation of subdivision (a) of Section 25602. Such action may be brought in the county in which the violation occurred or is threatened to occur. Any proceeding brought hereunder shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that it shall be presumed that there is no adequate remedy at law, and that irreparable damage will occur if the continued or threatened violation is not restrained or enjoined.
>
> SECTION 3. Section 25602.3 is added to the Business and Professions Code, to read:
>
> 25602.3. Notwithstanding any other provision of this division, no licensee may petition the department for an offer in compromise pursuant to Section 23095 for a second or subsequent violation of subdivision (a) of Section 25602 which occurs within 36 months of the initial violation.

Code section 25602.[78] First, it holds tavern owners who serve liquor to an obviously intoxicated minor civilly liable for injuries inflicted by that minor upon third persons.[79] Second, the ABC Director[80] may now prospectively enjoin a violation or expected violation of California Business and Professions Code section 25602. This sanction is additional to the present use of misdemeanor citations imposed after a violation has occurred.[81] The new procedure expedites the issuance of injunctions by deleting the former requirements of multiple citations and scheduled hearings. Third, the legislation no longer permits tavern owners facing a second or subsequent charge of serving liquor to an obviously drunk person to plea bargain.[82]

S.B. 1175 gives more strength to the criminal penalties found in California Business and Professions Code section 25602, and is intended as a compromise between suppliers and opponents of S.B. 1645. S.B. 1175 is intended to create a greater deterrent against serving liquor to drunk patrons than existed prior to *Vesely*, while avoiding the undesirable consequences of full scale civil liability against commercial *and* social suppliers. Whether this compromise will, in fact, have a noticeable effect on the number of drunk driving injuries remains to be seen.

The combined practical effect of S.B. 1645 and S.B. 1175 on suppliers is quite clear. The social host will never be subject to liability for the acts of intoxicated guests.[83] The legislative reinstatement of the common law proximate cause analysis, whereby consumption is seen as the proximate cause of injuries resulting from intoxication, insures that result. A plaintiff can never establish the prima facie case for negligence against a supplier if supply cannot be the proximate cause of injuries to third persons. Similarly, tavern owners will not face civil liability for the acts of their patron is a minor.[84] Tavern owners are civilly liable if they serve liquor to an obviously intoxicated minor, and that minor then injures a third person.[85] Thus, it is clear that the practical

---

[78] The three subsections added to CAL. BUS. & PROF. CODE § 25602 (West 1964) are additions to the alternations made by S.B. 1645.

[79] 1978 Cal. Stats. 3245, ch. 930, § 1.

[80] CAL. BUS. & PROF. CODE § 23043 (West 1964).

[81] 1978 Cal. Stats. 3245, ch. 930, § 2.

[82] *Id.* 3.

[83] 1978 Cal. Stats. 3244-3245, chs. 929 & 930.

[84] 1978 Cal. Stats. 3245, ch. 930, § 2.

[85] An interesting fact pattern would be if a tavern owner served liquor to a minor who was not obviously intoxicated, but who then injured a third person. Since serving liquor to a minor is a misdemeanor (CAL. BUS. & Prof. Code § 25658), a negligence per se theory could be proposed. So too could a common

effect of the new California legislation on the bar and restaurant industry will be to virtually eliminate the huge insurance premiums which *Vesely* and *Coulter* spawned.

The effect of the two bills on injured third parties is equally clear. Even though the Legislature hopes that the increased sanctions imposed by S.B. 1175 will decrease the number of drunk driving injuries in California, no one suggests that such injuries will be completely eliminated. Those innocent third persons who *are* injured will not receive the same level of compensation under the new legislation as they would under *Vesely* and *Coulter*. Injured third parties can now only seek recovery from the drunk driver. Failing that, these third parties must seek support from society in that they will be supported by welfare and Medi-Cal.

It is contended, however, that even if tavern owners were held liable for civil damages, compensation to injured third parties would still be inadequate due to the unavailability of adequate insurance for suppliers.[86] Since compensation for third parties is inadequate in either case, it is best for society to maintain a strong tax paying bar and restaurant industry to help pay for welfare and Medi-Cal programs. This is a compelling argument. If the sanctions imposed by S.B. 1175 do, in fact, result in fewer and less serious injuries to innocent third persons, a strong argument can be made that is not in society's best interest to sacrifice a large and important liquor supply industry in an attempt to compensate a reduced number of third party victims. However, if S.B. 1175 does not result in a reduced number of third party injuries, the legislature's attempted compromise will have failed. In that event, it is still arguable that vital liquor supply industry is more important than the broken lives resulting from drunk driving injuries. However, this contention loses much of its appeal in light of the magnitude of the drunk driving problem facing society today.[87]

The legislature hopes that its actions will result in fewer drunk driving injuries while preserving the vitality of the restaurant, bar, and liquor supply industries. Only time will determine if their course is correct.

---

law negligence theory. This fact pattern does not seem to be included under S.B. 1645 or S.B. 1175. *See* Weiner v. Alpha Tau Omega Fraternity, 258 Ore. 632, 485 P.2d 18 (1971).

[86] *See* note 70 *supra*.

[87] Coulter v. Super. Ct., 21 Cal. 3d 144, 154, 577 P.2d 669, 675 Cal. Rptr. 534, 539 (1978).

CONCLUSION

S.B. 1645 and S.B. 1175 returned California to the pre-*Vesely* notions of non-liability in most respects. As a result of S.B. 1645, civil liability is never allowed against a social supplier, and is only allowed against a commercial supplier if the patron was an obviously drunk minor who received additional liquor from the supplier, and then injured an innocent third person.

The policy alternatives as advocated by the proponents and opponents of S.B. 1645 were clear. Without the legislation, the restaurant, bar and liquor supply industries would wither in California under the burden of civil liability for which they could not obtain adequate insurance. Innocent third persons, however, would be in a better position to recover for their injuries without the legislation. On balance, the bills maintain the liquor supply industry while leaving the injured third persons substantially uncompensated.

The legislature hopes it has found the common ground between these two extremes by enacting S.B. 1175 as a companion to S.B. 1645. S.B. 1175 imposes stricter and swifter criminal sanctions against the supply of alcohol to an obviously intoxicated individual. The legislature hopes that these increased criminal sanctions will sufficiently deter the supply of alcohol to obviously intoxicated persons so as to decrease the number of drunk driving injuries on California's highways. If these sanctions are effective, the number of accidents will be reduced without severely affecting the vitality of California's liquor supply industry. Whether the legislature's attempts will produce their desired effects remains to be seen.

Gary Elam