

The Case of the Drunken Party Guest

Childs v. Desormeaux [2006]

Teacher Resource

Curriculum Links: Understanding Canadian Law (CLU3E), Grade 11, Workplace Preparation

Legal Focus: Civil Law, Negligence, Duty of Care

Estimated Time: 1 period

Overall Expectations:

- Describe how the law may serve people who are intentionally or unintentionally injured or harmed by others.

Specific Expectations:

- Describe the elements necessary to determine negligent conduct.

Description of the Case

Julie Zimmerman and Dwight Courier hosted a BYOB party at their private home, during which they only served three-quarters of a bottle of champagne in small glasses at midnight.

One of their guests, Desmond Desormeaux, was walked by one of the hosts to his car and asked whether he was “ok”. He answered “no problem” and left. After leaving the party, Mr. Desormeaux, who was by then impaired, drove his vehicle into on-coming traffic and collided head-on with another vehicle. One of the passengers in the other vehicle, Derek Dupre, was killed and three others were seriously injured, including Zoe Childs.

Ms. Childs brought an action against Mr. Desormeaux, as well as the hosts of the party for the injuries she suffered.

The Progression through the Courts

The trial judge and the Court of Appeal for Ontario concluded that social hosts of parties do not owe a duty of care to members of the public who may be injured by an intoxicated guest’s conduct.

Ms. Childs appealed to the Supreme Court of Canada.

The Final Judgment

The Supreme Court of Canada agreed with the lower courts and affirmed that social hosts are not responsible for the actions of their guests on public highways after they leave the hosts' homes.

In this case there was not a close enough relationship (also known as “proximity”) between the social hosts and the harm caused to the passenger by the intoxicated party guest in order to find liability. There was no evidence that the hosts knew, or ought to have known, that Mr. Desormeaux was impaired when he left the party. Although the hosts knew that Mr. Desormeaux had gotten drunk in the past and had driven home in this state, the court found that the hosts' knowledge of his history of alcohol consumption and impaired driving was not enough. It was not “reasonably foreseeable” in this particular instance that he would be driving impaired and would pose a risk to other motorists.

The Court found that social hosts do not have a duty to act to monitor guests' drinking or to prevent them from driving. The Court stated that consumption of alcohol and the assumption of the risks of impaired judgment linked to alcohol consumption are in most cases a personal choice and personal activity. The hosts did not do anything to implicate themselves or increase the risk that Mr. Desormeaux would drive impaired and injure others. In this case, the hosts did not control the supply or service of alcohol or continue to serve Mr. Desormeaux when he was visibly impaired.

The Court also found that there was also no evidence that anyone reasonably relied on the hosts to monitor guests' intake of alcohol or prevent intoxicated guests from driving.

The Court distinguished the expectation put on social hosts from the expectation and reliance placed on commercial hosts – who have the capacity to monitor what they are serving to an individual, are regulated by legislation, and are making profit from selling drinks. These factors create a different relationship between bar owners/bar servers and their patrons from that of social hosts and their guests. With this different relationship comes a duty to protect the public from individuals who become impaired on their premises and pose a threat once they leave the premises and get into their cars.

Teaching & Learning Strategies

1. Ask students to complete ***The Big Question***. They should indicate their level of agreement with each statement by placing an X on the line and provide reasons for their answers in the spaces below. Take a vote to gauge numbers on each side for each statement. Invite students to express opinions on each statement, compare their answers, and ask students to vote again.
2. Using a teacher- or student-centred reading strategy, read ***The Facts of the Case*** and discuss ***The Issue*** as a class. Point out to the students that while the case is indexed as *Childs v. Desormeaux*, the defendants (respondents) in this case include Desmond Desormeaux, Julie Zimmerman, and Dwight Courier.
3. Review ***The Relevant Law*** and explain how the law applies to this particular case.

4. Have students complete *The Arguments in Court* exercise. Have them incorporate the relevant legal terms in their arguments. Ask students to speculate on the single most important argument that might be made in court by both Childs' and the party hosts' lawyers. Discuss as a class. You may also consider having students present their arguments orally.
5. Read *The Progression Through the Courts* and *The Final Judgment*. Discuss whether or not students agree with the Supreme Court of Canada's final decision.
6. Ask students to complete the *What's Your Opinion?* exercise. Discuss the answers as a class.

Assessment & Evaluation

- Class discussions
- *The Arguments in Court* activity
- *What's Your Opinion?* worksheet

Resources

Ontario Justice Education Network

www.ojen.ca

- The Top Five 2006 (See *Childs v. Desormeaux*)

Supreme Court of Canada Decisions – *Childs v. Desormeaux* [2006]

<http://scc.lexum.umontreal.ca/en/2006/2006scc18/2006scc18.html>

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Student Handout

The Big Question

Place an X on the line below to indicate your level of agreement with the following statements. Provide reasons for your answers in the space below.

1. A person who hosts a party (i.e. a social host) where alcohol is consumed is legally responsible for the actions of people who attended the party after they have left.

Strongly Disagree _____ Strongly Agree

Reasons: _____

2. An owner of a commercial establishment where alcohol is served and consumed (e.g. a bar, restaurant, club, etc) is legally responsible for the actions of people who visit the establishment after they have left.

Strongly Disagree _____ Strongly Agree

Reasons: _____

Take a vote among members of your class or group to determine how many agree with each statement, and how many disagree. Have a few students from each side of the argument justify their responses to the larger group. Then take a second vote to see if anyone changed their minds because of the arguments they had just heard. Ask those students what it was that prompted them to change their opinions.

Once you have completed the case and heard the verdict of the courts, hold another vote to see if the numbers are the same as they were when you started.

The Facts of the Case

Julie Zimmerman and Dwight Courrier hosted a BYOB party at their private home, during which they only served three-quarters of a bottle of champagne in small glasses at midnight.

One of their guests, Desmond Desormeaux, was walked by one of the hosts to his car and asked whether he was “ok”. He answered “no problem” and left. After leaving the party, Mr. Desormeaux, who was by then impaired, drove his vehicle into on-coming traffic and collided head-on with another vehicle. One of the passengers in the other vehicle, Derek Dupre, was killed and three others were seriously injured, including Zoe Childs, who was paralyzed as a result of the accident.

Ms. Childs brought an action against Mr. Desormeaux, as well as the hosts of the party for the injuries she suffered and the cost of her ongoing care and loss of income in the future.

The Issue

- As party hosts, were Julie Zimmerman and Dwight Courrier responsible for the actions of Desmond Desormeaux because he had been drinking in their home?

The Relevant Law

Civil law is concerned with disputes between private individuals. In general, a tort (like negligence) is committed when one individual does not fulfill an obligation or duty that is owed to another person. This results in a loss to the victim (who is known as the **plaintiff** in court). A civil action can be brought against the wrongdoer (the **defendant** in court), in order to get compensation for the loss. Usually, if the plaintiff’s civil action is successful, money will be awarded as compensation. Civil actions do not result in jail time for the defendant.

At the most basic level, there are four requirements that must be satisfied in order for a negligence claim to be successful.

- (a) A **duty of care** is owed to the plaintiff. This happens when the defendant is under a legal obligation to exercise care for the plaintiff. (This legal obligation is determined by whether the relationship between the plaintiff and the defendant is close (or “*proximate*”) enough to create the obligation.)
- (b) There is a failure to meet the **standard of care** required to carry out that duty. (Once the court establishes that a duty is owed, it must decide what level (or “*standard*”) of care is appropriate.)
- (c) The plaintiff must have actually experienced some sort of loss. If the defendant failed to live up to the standard of care that was owed, but no loss resulted from those actions, then no damages will be awarded.
- (d) The defendant’s actions must have caused the plaintiff’s loss. (e.g. If the defendant did not meet the standard of care, the plaintiff experienced loss, but that loss was caused by something *other* than the defendant’s actions, the negligence claim will be unsuccessful.)

The Arguments in Court

Arguments for the Plaintiff (Zoe Childs)

If you were the attorney representing the paralyzed passenger, Zoe Childs, what are three arguments would you make that justify placing the blame on the party hosts?

- 1. _____

- 2. _____

- 3. _____

Arguments for the Defendants (Julie Zimmerman, Dwight Courier)

If you were the attorney representing the party hosts, Julie Zimmerman and Dwight Courier, what are three arguments would you make freeing them of any blame in the case?

1. _____

2. _____

3. _____

The Progression through the Courts

The trial judge and the Court of Appeal for Ontario concluded that social hosts of parties do not owe a duty of care to members of the public who may be injured by an intoxicated guest’s conduct.

Ms. Childs appealed to the Supreme Court of Canada.

The Final Judgment

The Supreme Court of Canada agreed with the lower courts and affirmed that social hosts are not responsible for the actions of their guests on public highways after they leave the hosts’ homes.

In this case there was not a close enough relationship (also known as “proximity”) between the social hosts and the harm caused to the passenger by the intoxicated party guest in order to find liability. There was no evidence that the hosts knew, or ought to have known, that Mr. Desormeaux was impaired when he left the party. Although the hosts knew that Mr. Desormeaux had gotten drunk in the past and had driven home in this state, the court found that the hosts’ knowledge of his history of alcohol consumption and impaired driving was not enough. It was not “reasonably

foreseeable” in this particular instance that he would be driving impaired and would pose a risk to other motorists.

The Court found that social hosts do not have a duty to act to monitor guests’ drinking or to prevent them from driving. The Court stated that consumption of alcohol and the assumption of the risks of impaired judgment linked to alcohol consumption are in most cases a personal choice and personal activity. The hosts did not do anything to implicate themselves or increase the risk that Mr. Desormeaux would drive impaired and injure others. In this case, the hosts did not control the supply or service of alcohol or continue to serve Mr. Desormeaux when he was visibly impaired.

The Court also found that there was also no evidence that anyone reasonably relied on the hosts to monitor guests’ intake of alcohol or prevent intoxicated guests from driving.

The Court distinguished the expectation put on social hosts from the expectation and reliance placed on commercial hosts – who have the capacity to monitor what they are serving to an individual, are regulated by legislation, and are making profit from selling drinks. These factors create a different relationship between bar owners/bar servers and their patrons from that of social hosts and their guests. With this different relationship comes a duty to protect the public from individuals who become impaired on their premises and pose a threat once they leave the premises and get into their cars.

What’s Your Opinion?

Suppose the events that occurred between the party hosts and Mr. Desormeaux had been different. At what point(s), if any, do you think the party hosts would assume legal responsibility for the injuries suffered by Zoe Childs? Justify your response based on the information you’ve learned about this case.

- A. If Mr. Desormeaux arrived at the door already intoxicated.
- B. If the hosts had been serving alcohol all evening and were aware of how much he had been drinking.
- C. If the hosts had been initiating “drinking games” which resulted in Mr. Desormeaux drinking more than he otherwise might have.
- D. If the hosts had been selling drinks.
- E. If Mr. Desormeaux had admitted to being intoxicated and stumbled on his way out the door.
- F. If the host actually helped Mr. Desormeaux into his car, even though he was obviously intoxicated.

I think that the party hosts should assume responsibility at point(s) _____, because

Who do you think should be responsible for the harm to Zoe Childs and the cost of her long-term care and medical costs?
