

Parent Trap – The risks of supervising teenage drinking

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Introduction

Teenage alcohol consumption is a source of concern for many parents. Indeed, it is not surprising that current statistics reveal that the majority of teenagers today drink alcohol socially. While many drink responsibly, some young people develop risky drinking patterns which manifest in dangerous behaviours. Activities undertaken under the influence of excess amounts of alcohol, consumed irresponsibly threaten not only the health and safety of those who drink, but also of others around them.

Australian data on patterns of alcohol consumption reveal that in the last year, 37 per cent of males and 42 per cent of females aged 14 – 19 years drank in a way that put themselves at risk or high risk of short term alcohol-related harm at least once (Australian Institute of Health and Welfare, 2005). Moreover, the number of deaths and hospitalisations of children and young people due to alcohol is higher than for all the illicit drugs combined (Loxley et al, 2004).

In light of this highly concerning social youth phenomenon, we have prepared an outline of the current civil and criminal consequences for adults who supply alcohol to minors. We focus on occupier's liability, the parental duty of care and also the potential for criminal liability where alcohol related injuries occur under supervision. The commentary therefore attempts to assist parents in their reasonable exercise of care towards young persons who drink under their guardianship.

1) Victorian legislation on supplying alcohol to minors

a) Secondary suppliers

i) A secondary supplier is an adult who sells or supplies alcohol to persons under the age of 18.

ii) The law in Victoria:

- (1) It is illegal for an adult to supply a minor with alcohol in public.
- (2) It is illegal to purchase for or serve alcohol to a minor on licensed premises.
- (3) Unless accompanied by a parent or guardian and having a meal, it is an offence for a minor to be on licenced premises or to purchase, receive or consume alcohol.
- (4) Penalties for adults: police may issue a on the spot fine for more than \$600
- (5) **However**, it is **not** illegal for adults to provide alcohol to minors in a private residence, even if the minors are not their own children.

iii) In comparison, NSW legislation is more stringent. It provides that adults shall not sell or supply liquor to a minor whether in a licensed premises or not. Penalties for adults who do supply alcohol to minors is a \$5500 fine.

b) Future Reform

- i) The federal Government plans to unify laws across all states and territories to control the supply of alcohol to minors. However there is no suggestion that the government is planning to increase the legal drinking age.

2) **Civil liability: the law of negligence**

a) **Negligence and Occupier's liability**

Situation: where alcohol is served by an adult at a private residence to persons under the age of 18.

The law: Victorian legislation provides that all occupiers owe a general duty to exercise reasonable care to protect individuals who enter into their premises from foreseeable risks of injury.

- i) Therefore, an adult supervising young persons drinking alcohol in a private home is legally considered a 'host' who is responsible for the safety and wellbeing of that person. This is known the duty of care of an 'occupier'.

ii) **Legal implications**

- (1) The duty requires the adults to not only make the environment reasonably safe for the guests but also to prevent guests from sustaining reasonably foreseeable risks of injury, including injuries arising from alcohol consumption. When alcohol is involved, the risk of injury should be reasonably foreseeable and the Courts will likely take a hard line under these circumstances.
- (2) The standard of care required of a host or 'occupier' is governed by Victorian legislation. Importantly, the standard is heightened where guests are minors *and* where alcohol is involved. See *Wrongs Act 1958* section 14B(3)
- (3) Therefore if injury occurs at a party where alcohol is ingested by minors, the adult host is likely to be liable for breach of duty. This is because reasonable precautions were not taken to protect minors under the adult's supervision and the adult may be liable to compensate for any personal injuries sustained.

b) **Negligence and Parents**

The law: in Australia, it is established that parents do not owe their children or the children of others a general duty to exercise reasonable care in preventing injuries which are reasonably foreseeable (*Robertson v Swincer, Hahn v Conley*).

- i) While the law may be counter intuitive, remember that legal duties are separate from moral obligations because they are constrained by the practicalities of the legal system. Courts have ruled that as matter of policy, it would be impractical to impose a general parental duty to prevent harm because lapses of care within the ongoing nature of the obligation are 'almost inevitable'. Moreover, neither Courts nor Parliament are willing to recognise the consistent legal standards of parental supervision.

ii) **Legal Implications and future development**

- (1) However, there are still circumstances where a positive duty may be imposed on parents in relation to preventing harm to their children. That is, parents have a duty **not to create a foreseeable risk of injury** to the child (such as calling a child onto a roadway of oncoming traffic).
- (2) While the law in Australia is not yet developed to consider whether supplying alcohol to children is ‘creating a foreseeable risk of injury’, some guidance may be given by judges in the English courts. Very recently, in the UK case of *Harris v Perry*, the judges suggested that constant surveillance by parents may be required if the children’s activities involve an ‘unacceptable risk’. Although no examples were given as to what is ‘unacceptable’, it is possible that an argument in relation to the supply of alcohol by parents to children may be made as follows:
- (i) The risk of alcohol related injuries is well known and documented in our society and therefore reasonably foreseeable.
 - (ii) Consequently, parents who supply alcohol to their children should be subject to a positive duty of care to prevent alcohol related injuries sustained by their children.
 - (iii) The system of surveillance to satisfy the standard of care may include:
 - 1. Ceasing to serve alcohol when it is apparent that the child is already significantly affected by prior consumption.
 - 2. Keeping an eye out for dangerous activities which may be fuelled by excess consumption.
- iii) Finally, while parents do not have a general duty of care to prevent harm to their own children, they do owe a duty of care prevent harm sustained by a guest under their supervision. [See occupier’s liability discussed above]

3) **Criminal Liability**

a) **Aiding and Abetting the crime of causing injury**

- i) **Situation:** where a minor is not prevented from accessing alcohol by the supervising guardian in a private residence and causes injury to others.
- ii) **The Law:** under Victorian statute, it is a criminal offence to intentionally or recklessly cause injury in others. [See the *Crimes Act 1958*, sections 16 – 18]
- iii) **Issue:** where the young person causes injury to another and lacks the capacity to be held criminally liable (due to excessive intoxication), can the adult supervisor be held criminally liable for injuries ensued instead?

- iv) While no criminal offences have been laid against parents under these circumstances, the mechanisms under criminal law are present to enable such a prosecution to be pursued.
- v) **Legal Implications**
 - (1) Under criminal law, a person who did not commit the offence (i.e. causing injury to another) may nevertheless be charged for ‘aiding and

abetting', even if no proactive aid was given to the offender in the commission of a crime.

(2) Moreover, the principle offender (i.e. the minor who causes injury to another) need not be convicted of an offence for an abetter (i.e. a parent) to be held liable.

(3) **The law of abetting:**

(a) While merely being present at the scene of the offence is not a crime, if the spectator is under a duty to prevent the crime or if they have a right of control over the offender, refraining to act may be seen as 'abetting'. This is because the spectator's active presence can amount to an assent to the commission of the crime.

(b) Therefore, if a parent stands by while persons under their care instigate or participate in causing injury to others or in the damaging of property, it is possible under the criminal justice system that the parent is seen as encouraging the behaviour that results in such crimes being committed.

(c) The consequence of being held as an abettor is that the parent will be criminally charged as the principal offender for the commission of offences listed within the *Crimes Act*. That is, parents may be charged for intentionally or recklessly causing injury to others.

4) Useful resources for parents

- a) 'Alcohol use and related harm among young people across Victorian and local government areas 2006'
 - i) <http://www.turningpoint.org.au/library/vas08.pdf>
- b) 'Teenagers and Alcohol: A Guide for Parents'
 - i) <http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/brochure-teen-alcohol>
- c) 'Alcohol, Teenage Parties and the Law'
 - i) http://www.eduweb.vic.gov.au/edulibrary/public/stratman/Policy/schoolgov/drugged/parent_fact_sheets/factsheet_2_alcohol_teenagers_the_law.pdf
- d) 'What is secondary supply?'
 - i) http://www.alcoholandwork.adf.org.au/downloads/fact_sheets/FS_6.4_Secondary_Supply.pdf