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Torts—Dramshop Liability in Arkansas—Illegal Sales of Liquor to Minors May Expose Alcohol Vendors to Expensive Liability. Shannon v. Wilson, 329 Ark. 143, 947 S.W.2d 349 (1997).

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TORTS—DRAMSHOP LIABILITY IN ARKANSAS—ILLEGAL SALES OF LIQUOR TO MINORS MAY EXPOSE ALCOHOL VENDORS TO EXPENSIVE LIABILITY. *SHANNON v. WILSON*, 329 Ark. 143, 947 S.W.2d 349 (1997).

I. INTRODUCTION

In *Shannon v. Wilson*,[1] the Arkansas Supreme Court held that a vendor of alcohol can be held liable for injuries that occur as a result of the illegal sale of alcohol to a minor.[2] This decision overruled *Carr v. Turner*,[3] which adopted the common law rule of nonliability for liquor vendors and tavern owners.[4] For more than thirty years, the court asserted that the proximate cause of any injuries was the consumption of alcohol rather than its sale.[5]

In *Shannon*, two young boys died in an automobile accident after illegally purchasing and consuming alcohol from a liquor store in Fayetteville, Arkansas.[6] The trial court dismissed the suit brought against the liquor store based on the rule from *Carr*.[7] On appeal, the *Shannon* court imposed a new rule that created a cause of action under common law negligence against alcohol vendors for those injured by intoxicated minors.[8]

The purpose of this note is to discuss the facts involved in *Shannon v. Wilson*, examine the history and rationale of the common law rule of nonliability, analyze the reasoning of the *Shannon* court in overturning the common law rule, and explore the significance of the newly established dramshop liability in Arkansas.

II. FACTS

On January 28, 1995, Charles Shannon and Jarred Sparks, both thirteen years old,[9] were passengers in a pickup truck driven by David Farmer, who was

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1. 329 Ark. 143, 947 S.W.2d 349 (1997).

2. *See Shannon*, 329 Ark. at 146, 947 S.W.2d at 350. For the purposes of this note, "minor" shall be the equivalent of "underage" as defined in ARK. CODE ANN. § 5-65-302(2) (Michie 1997). "Underage means any person who is under the age of twenty-one (21) years old and therefore may not legally consume alcoholic beverages in Arkansas." *Id.*

3. 238 Ark. 889, 385 S.W.2d 656 (1965).

4. *See Shannon*, 329 Ark. at 146, 947 S.W.2d at 350.

5. *See* Milligan v. County Line Liquor, Inc., 289 Ark. 129, 709 S.W.2d 409 (1986). "[I]t is the consumption of intoxicants, not the sale standing alone, which is the proximate cause of injuries." *Milligan*, 289 Ark. at 130, 709 S.W.2d at 410.

6. *See Shannon*, 329 Ark. at 147, 947 S.W.2d at 350-51.

7. *See Shannon*, 329 Ark. at 147, 947 S.W.2d at 350.

8. *See id.*

9. There is some dispute among the authorities concerning the ages of the boys. The court's opinion in *Shannon* and the Statement of the Case in the appellant's brief state that both boys were thirteen years old. *See Shannon*, 329 Ark. at 146, 947 S.W.2d at 350; Appellant's Brief at 5, Shannon v. Wilson, 329 Ark. 143, 947 S.W.2d 349 (1997) (No. 96-762). Other authorities, including the Abstract of the appellant's brief, state that Charles Shannon was

sixteen years old.[10] Between 7:00 p.m. and 8:30 p.m. that evening, the boys purchased beer and malt liquor at the drive-through window of City Liquor in Fayetteville, Arkansas.[11] The City Liquor employee who sold the alcohol to the boys never asked to see any form of identification.[12]

When the boys left City Liquor, they began drinking as they drove to St. Paul, Arkansas.[13] Once in St. Paul, David Farmer went into a pool hall, leaving Charles Shannon and Jarred Sparks in the truck to drink the remaining alcohol.[14] Shannon and Sparks soon drove away from the pool hall in the pickup.[15] Shortly thereafter, the intoxicated boys lost control of the truck.[16]

The Arkansas State Police dispatched a trooper to the accident in Madison County at approximately 9:10 p.m.[17] The trooper determined that the driver was unable to negotiate a curve when the truck left the road.[18] The truck traveled through a fence, hit a telephone pole, and struck a tree.[19] Officers found Jarred Sparks in the driver's seat of the truck and Charles Shannon in the passenger's seat.[20] Both boys were dead.[21] Chemical analysis of the boys' blood revealed that Jarred Sparks's blood alcohol content was .10%,[22] and Charles Shannon's blood alcohol content was .07%.[23]

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sixteen years old. *See* Appellant's Brief at 12, *Shannon* (No. 96-762); Cpl. M.J. Meadows, ARKANSAS MOTOR VEHICLE TRAFFIC ACCIDENT REPORT (No. 95-6500), Jan. 28, 1995 [hereinafter ACCIDENT REPORT].

10. *See Shannon,* 329 Ark. at 146, 947 S.W.2d at 350.

11. *See id.* The boys purchased a six-pack of beer and a six pack of Zima. *See* Appellant's Brief at 12, *Shannon* (No. 96-762).

12. *See Shannon*, 329 Ark. at 146, 947 S.W.2d at 350.

13. *See Shannon*, 329 Ark. at 147, 947 S.W.2d at 350. It is approximately twenty-nine miles from Fayetteville, Arkansas to St. Paul, Arkansas. *See* 1996 HIGHWAY MAP OF ARKANSAS, Arkansas State Highway And Transportation Department.

14. *See Shannon*, 329 Ark. at 147, 947 S.W.2d at 350.

15. *See id.*

16. *See id.*

17. *See id.*

18. *See* ACCIDENT REPORT, *supra* note 9. The report stated that the Aqua-colored 1993 Ford Ranger pickup driven by Jarred Sparks lost control on a curve 7/10 of a mile east of the Madison County/Washington County line on Arkansas State Highway 16. It was raining that evening, and the road was wet. The report indicated that the truck traveled approximately 390 feet after leaving the highway before coming to rest against a tree. *See* ACCIDENT REPORT, *supra* note 9. The accident occurred approximately thirteen miles from where the boys left David Farmer in St. Paul. *See* 1996 HIGHWAY MAP OF ARKANSAS, *supra* note 13.

19. See ACCIDENT REPORT, *supra* note 9.

20. *See* ACCIDENT REPORT, *supra* note 9.

21. *See Shannon*, 329 Ark. at 147, 947 S.W.2d at 351.

22. It is unlawful for any person who is under the age of twenty one years old "to operate or be in actual physical control of a motor vehicle if at that time there was one-fiftieth of one percent (0.02%) . . . by weight of alcohol in the person's blood . . . ." ARK CODE ANN. § 5-65-303(b) (Michie 1997).

23. *See Shannon*, 329 Ark. at 147, 947 S.W.2d at 351.

Charles Shannon's father filed suit against City Liquor.[24] He alleged that City Liquor was negligent in selling alcohol to the three minors.[25] The plaintiff asserted that it was foreseeable that minors who purchase liquor at a drive-through window would drive the vehicle in an impaired state, thus endangering themselves and others.[26]

The trial court dismissed the complaint for failure to state a claim on which relief could be granted.[27] On appeal, Shannon asked the court to change the law in Arkansas and allow a cause of action against a vendor who knowingly sells alcohol to minors.[28] The court then overturned the rule set forth in *Carr v. Turner* which denied the existence of dramshop liability in Arkansas in the absence of a statute.[29]

III. BACKGROUND

The purpose of this Background section is to dissect the history and the rationale of the common law rule of nonliability as against alcohol vendors, and also to explore the societal changes that caused that rule to slip into minority status. At common law, one injured by the acts of an intoxicated person had no cause of action available against the person who sold the alcohol.[30] Therefore, alcohol vendors owed no duty to those injured by intoxicated patrons.[31] Proximate causation was the barrier to recovery.[32] Courts subscribed to the theory that the consumption of the alcohol, rather than the sale, was the proximate cause of any injuries.[33] Most jurisdictions have

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24. *See Shannon*, 329 Ark. at 147, 947 S.W.2d at 351. Shannon filed suit against L.K. Wilson and Elizabeth Ashworth, individually and as partners of City Liquor. *See Shannon*, 329 Ark. at 143, 947 S.W.2d at 349. City Liquor was located at 1428 S. School Street in Fayetteville, Arkansas. *See* Appellant's Brief at 12, *Shannon* (No. 96-762).

25. *See Shannon*, 329 Ark. at 147, 947 S.W.2d at 351.

26. *See id.*

27. *See id.* Appellees filed a motion to dismiss under ARK. R. CIV. P. 12(b)(6) before Judge Tom Keith in Benton County Circuit Court. *See Shannon*, 329 Ark. at 147, 947 S.W.2d at 351. "For the purpose of deciding the [12(b)(6)] motion, the factual allegations in the complaint are accepted as true and viewed most favorably to the claimant." DAVID NEWBERN, ARKANSAS CIVIL PRACTICE AND PROCEDURE, § 11-7, at 143 (2d ed. 1993).

28. *See Shannon*, 329 Ark. at 147, 947 S.W.2d at 351.

29. *See Shannon*, 329 Ark. at 160, 947 S.W.2d at 358.

30. *See* Michael D. Morrison & Gregory N. Woods, *An Examination of the Duty Concept: Has it Evolved in Otis Engineering v. Clark?*, 36 BAYLOR L. REV. 375, 407 (1984).

31. *See id.* Injured persons had only a cause of action against the intoxicated tortfeasor. *See id.*

32. *See* W. Barton Chapin, *Liquor Vendors and Social Hosts: Are They Immune From Civil Liability?*, Wis. L. Rev., 65-Dec. 1992, at 11, 12.

33. *See* Daphne D. Sipes, *The Emergence of Civil Liability for Dispensing Alcohol: A Comparative Study*, 8 REV. LITIG. 1, 3 (1988). "Voluntary consumption of alcohol, rather than the mere furnishing of alcohol, is the proximate cause of any subsequent injury as a matter of

abrogated the strict nonliability rule based either on a statute or a judicially imposed cause of action.[34]

A. Nineteenth Century Attitudes Toward Alcohol Influenced Legislatures

In the mid-nineteenth century, many state legislatures passed civil damage acts, popularly known as Dramshop Acts.[35] Dramshop acts traditionally imposed strict liability on the seller of alcoholic beverages for injuries caused by intoxicated persons.[36] These acts were promulgated during the Temperance Movement primarily to regulate morals rather than to provide for tort compensation.[37] Nonetheless, many of the acts did, and others were revised to, compensate innocent victims of an intoxicated tortfeasor.[38]

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law. Subsequent injury is not deemed foreseeable to the alcohol dispenser due to its remoteness from the act of dispensing." *Id.* "The principle is epitomized in the truism that there may be sales without intoxication, but no intoxication without drinking." *Collier v. Stamatis*, 162 P.2d 125, 127 (Ariz. 1945).

34. *See* Madeline E. Kelly, *Liquor Liability and Blame-Shifting Defenses: Do they Mix?* 69 MARQ. L. REV. 217, 218 (1986). The basis for imposing dramshop liability includes statutes that expressly impose such liability, alcohol regulatory statutes that are interpreted by courts to establish negligence per se, and common law negligence theory. *See id.*

35. *See* Sipes, *supra* note 33, at 3. A Dramshop is defined as "[a] drinking saloon, where liquors are sold to be drunk on the premises. . . . A place where spirituous liquors are sold by the dram or the drink; a barroom." BLACK'S LAW DICTIONARY 583 (4th ed. 1951).

36. *See* W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 81, at 581 (5th ed. 1984). For strict liability,

> [t]he basis of the liability is the defendant's intentional behavior in exposing those in his vicinity to . . . risk. . . . [S]trict liability often is said to be imposed 'without fault. . . .' [T]he defendant is not at 'fault' because he has only done a reasonable thing in a reasonable way, and . . . he is liable notwithstanding.

Id. § 75, at 537.

37. *See* Charles E. Sharp, *Dram Shop Laws and Problems*, 28 ALA. LAW. 409 (1967).

> The Dram Shop Acts are generally considered to be the byproduct of the prohibition movement. They provided the prohibitionists a measure of control over a 'legal, but ill favored trade . . . .' The new social consciousness which was influencing education and religion in the [18]70's found in the Temperance Movement a concrete issue upon which it could lavish its energy . . . . The definite goal at which the temperance forces were aiming was the enactment of a law which would adequately express their attitude toward the liquor traffic, and which would provide against the evils resulting from the sale of intoxicating liquors . . . . Although the National Temperance Movement did not effectuate the 18th Amendment of the Constitution until 1919, prior to that time prohibitionists lobbied State Legislatures to pass Dram Shop Acts designed to control liquor traffic and to provide against the evils . . . of intoxicating liquors.

Id. (citations omitted).

38. *See* Sipes, *supra* note 33, at 3 n.10. Wisconsin's 1849 dramshop act was cited as being the first of the dramshop acts. The Wisconsin act, WIS. STAT. ANN. § 176.35 (West 1974) (Repealed 1982), created a cause of action for persons injured by a drunken minor or habitual drunkard against the seller of the alcohol, provided the seller had been notified by the spouse

Prior to Prohibition, Arkansas also had a dramshop act that required a saloon keeper to post a $2,000 bond to pay for damages or injuries resulting from the sale of alcohol.[39] Even under the regime of the Arkansas dramshop act, the Arkansas Supreme Court refused to establish the sale of alcohol as being the proximate cause of injuries caused by or to intoxicated patrons.[40]

The Arkansas Supreme Court heard very few cases under the saloon keeper's bond act and applied a narrow interpretation of the act in each of them.[41] The court's strict interpretation of the act resulted in no statutory liability for monetary damages for injuries caused by the sale of alcohol.[42] In *Peter Anderson & Co. v. Diaz*,[43] a drunken saloon patron filed suit after the bartender and another patron set the plaintiff's foot on fire while he was still in the saloon.[44] The court held that the sale of the alcohol was not the proximate cause of the injuries and denied compensation to the injured patron based on the bond statute.[45] In *Bolen v. Still*,[46] a man fell from his horse and died after becoming intoxicated from alcohol purchased from the defendant.[47] The court again refused to recognize the sale of alcohol as the proximate cause of the death and denied recovery.[48]

After the repeal of Prohibition, many states, including Arkansas, repealed their dramshop statutes.[49] Courts that addressed the issue of dramshop liability in the absence of a statute generally held that although such a rule may be desirable, it was the responsibility of the state legislatures to create it.[50] A few

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or guardian of the drunkard not to sell alcohol to that person. The Wisconsin act was repealed in 1982. *See* Sipes, *supra* note 33, at 3-4 n.10.

39. *See Carr*, 238 Ark. at 890, 385 S.W.2d at 657 (citing KIRBY'S DIGEST § 5121 (1904) (repealed, 1915 Ark. Acts 30)); *see also* Robert V. Light, Note, *Liability of Vendor to Third Parties for Injury Caused by Sale of Intoxicants*, 9 ARK. L. REV. 179, 181 (1954-55).

40. *See Carr*, 238 Ark. at 890, 385 S.W.2d at 657 (citing Bolen v. Still, 123 Ark. 308, 185 S.W. 811 (1916); Peter Anderson & Co. v. Diaz, 77 Ark. 606, 92 S.W. 861 (1906); Gage v. Harvey, 66 Ark. 68, 48 S.W. 898 (1898)).

41. *See* Light, *supra* note 39, at 181-82 (citing Gage v. Harvey, 66 Ark. 68, 48 S.W. 898 (1898); McPherson v. Simmons, 63 Ark. 593, 40 S.W. 78 (1897); Grant v. Owens, 55 Ark. 49, 17 S.W. 338 (1891)). The court refused recovery in these cases holding that the statute under which the cases were brought failed to provide a civil remedy. *See* Light, *supra* note 39, at 181.

42. *See* Light, *supra* note 39, at 181.

43. 77 Ark. 606, 92 S.W. 861 (1906).

44. *See Peter Anderson & Co.*, 77 Ark. at 606-07, 92 S.W. at 862.

45. *See Peter Anderson & Co.*, 77 Ark. at 607-08, 92 S.W. at 862.

46. 123 Ark. 308, 185 S.W. 811 (1916).

47. *See Bolen*, 123 Ark. at 309, 185 S.W. at 811.

48. *See Bolen*, 123 Ark. at 312, 185 S.W. at 812.

49. *See* Daniel E. Johnson, *Drunken Driving—The Civil Responsibility of the Purveyor of Intoxicating Liquor*, 37 N.D. L. REV. 317, 321 (1961-62). "The collapse of temperance as a crusade . . . has stripped civil damage legislation of powerful support during a period in which the jural notion of liability based on proved fault has supplanted absolute liability. . . ." *Id.*

50. *See Carr*, 238 Ark. at 892, 385 S.W.2d at 658. "It may be that a Dramshop Act is to

courts allowed a common law cause of action by the wives, or widows, of known drunkards when an alcohol vendor continued to sell alcohol to their husbands after being asked not to serve them.[51] These cases were distinguishable from true dramshop liability[52] because they were based on common law loss of consortium claims by a spouse against one who knowingly sells "habit-forming drugs" to the other spouse.[53]

B. The Need For a Dramshop Renaissance in the Twentieth Century

National prohibition ended in 1933.[54] In the years that followed, states began regulating the sale and distribution of intoxicating liquors.[55] Automobiles became commonplace in America, thus increasing the damage that could be caused by an intoxicated person.[56] The devastation caused by drunken drivers prompted many jurisdictions to rethink their positions of nonliability.[57] Courts have taken judicial notice of the high costs of drinking and driving.[58]

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be desired, but such a measure should be the result of legislative action rather than of judicial interpretation." *Id.*

51. *See* Pratt v. Daly, 104 P.2d 147 (Ariz. 1940).

52. True dramshop liability availed a cause of action to an injured third party, rather than the spouse of the tortfeasor alone. *See, e.g.*, WIS. STAT ANN. § 176.35 (West 1974) (repealed 1982).

53. *See Pratt*, 104 P.2d at 150-152. Recovery in marital services cases tended to focus on the loss of protected interests, "but it eventually became clear that the husband's recovery for loss of consortium . . . included damages for loss of sexual attentions, society, and affection." KEETON ET AL., *supra* note 36, § 125, at 931. Modern loss of consortium claims are available to both spouses. *See* KEETON ET AL., *supra* note 36, § 125, at 931-32.

54. *See* U.S. CONST. amend. XXI (repealing amend. XVIII).

55. *See* Johnson, *supra* note 49, at 321. As compared with the dramshop acts of the nineteenth century, modern regulatory statutes governing alcohol more strictly control the distribution and sale of intoxicants than the Temperance Era legislators ever imagined. *See* Johnson, *supra* note 49, at 321.

56. *See, e.g.*, Meade v. Freeman, 462 P.2d 54, 65 (Idaho 1969) (Prather, J., concurring specially in the result, dissenting in part), *overruled by* Alegria v. Paynock, 619 P.2d 135 (Idaho 1980). The rule of nonliability was adequate in the days when transportation moved more slowly because of the means of transport. *See id.* (Prather, J., concurring specially in the result, dissenting in part). The old rule may not be suitable when an intoxicated person is "operating a machine that requires quick response of mind and muscle and capable of producing mass death and destruction . . . ." *Id.* (Prather, J., concurring specially in the result, dissenting in part).

57. *See, e.g.*, Elizabeth McFarland, *Teen Drunks Could Cost Liquor Seller: Court Says Stores May be Held Liable*, ARK. DEMOCRAT-GAZETTE, June 24, 1997, at 1A (quoting Bruce Mulkey of Rogers, Ark., attorney for the appellants) (The court "looked at the circumstances and decided that the common law rule was outdated in the days of drive-through windows and steel contraptions capable of going 100 mph.").

58. *See, e.g.*, Walz v. City of Hudson, 327 N.W.2d 120, 122 (S.D. 1982). In overruling the common law rule, the Supreme Court of South Dakota took judicial notice of the high percentage of traffic accidents in which alcohol is involved. *See id.* The court also recognized

In the last thirty years, courts have reversed the trend of non-liability that was based on the plaintiff's inability to establish proximate cause.[59] Liability may be imposed on a vendor who sells alcoholic beverages to an intoxicated driver in two ways.[60] First, civil liability may be imposed under a dramshop liability statute when the sale of alcoholic beverages results in harm to a third party due to the patron's intoxication.[61] Second, liability may be judicially imposed based upon either negligence per se or common law negligence principles.[62]

1. *Liability Based on Violation of a Statute*

Every state, as well as Washington D.C., has some form of alcohol beverage control act.[63] These acts generally state that it is a criminal misdemeanor to sell or to give alcohol to minors or a visibly intoxicated person.[64] Most courts have held that a violation of such an act by a vendor is either evidence of negligence or negligence per se.[65] The jury is then allowed to determine whether the violation of the act was the proximate cause of the plaintiff's injuries, as the court declared in *Shannon*.[66]

2. *Judicially Imposed Liability*

In 1959, two cases were decided that ushered in the modern era of common law dramshop liability. The courts in *Waynick v. Chicago's Last Department Store*[67] and *Rappaport v. Nichols*[68] both found liability based on the violation of a duty created by a criminal statute and the common law principle of negligence per se.[69]

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that "in 1981 alone, 62% of South Dakota's traffic fatalities were alcohol related." *Id.* Based on "this tragic waste of life," the court overruled its prior rule of nonliability and noted that the state legislature was free to disagree if it chose to do so. *See id.*

59. *See* Sipes, *supra* note 33, at 6.

60. *See* Sipes, *supra* note 33, at 7.

61. *See* Kelly, *supra* note 34, at 217-218.

62. *See* Kelly, *supra* note 34, at 218.

63. *See* Julius F. Lang, Jr. & John J. McGrath, Comment, *Third Party Liability for Drunken Driving: When "One For the Road" Becomes One For the Courts*, 29 VILL. L. REV. 1119, 1137 n.84 (1983-84).

64. *See, e.g.* ARK. CODE ANN. § 3-3-209 (Michie 1996) (making it unlawful to sell or give alcohol to a minor, habitual drunkard, or intoxicated person).

65. *See* Morrison & Woods, *supra* note 30, at 410. *See also* cases cited *infra* note 118.

66. *See Shannon*, 329 Ark. at 160, 947 S.W.2d at 357-358.

67. 269 F.2d 322 (7th Cir. 1959).

68. 156 A.2d 1 (N.J. 1959).

69. *See* Morrison & Woods, *supra* note 30, at 411-12.

Waynick began as a diversity action against three liquor store owners based on sales to a person who became intoxicated and was subsequently involved in a car accident.[70] The trial court dismissed the complaint.[71] The Seventh Circuit Court of Appeals held that no applicable state statute existed, so the court turned to the Michigan common law.[72] The *Waynick* court then recited the common law rule of nonliability against vendors of alcohol.[73] It also noted that pertinent penal statutes may be viewed as imposing a duty upon the vendor, the violation of which may constitute negligence per se.[74] The court allowed a cause of action based on the violation of the statutorily imposed duty of care.[75]

In *Rappaport v. Nichols*, the New Jersey Supreme Court handed down a landmark decision based upon a rationale similar to that used in *Waynick*.[76] Even though New Jersey had repealed its dramshop law, the court allowed a common-law negligence action against a tavern that served an intoxicated minor who was subsequently involved in a fatal collision.[77] Robert Nichols, who was eighteen years old, became intoxicated in several taverns and then drove an automobile.[78] Nichols collided with a car driven by Arthur Rappaport, killing Mr. Rappaport.[79]

The New Jersey Supreme Court held that selling alcohol to minors or visibly intoxicated persons was not only illegal, but could constitute negligence as well.[80] The court applied common law negligence principles to the issues of duty and the risk of harm.[81] The court also noted that liquor licensees operate their businesses by way of privilege rather than right.[82] The court held

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70. *See Waynick*, 269 F.2d at 323-24.

71. *See id.* at 324.

72. *See id.* at 324-25.

73. *See id.* at 325.

74. *See id.* The court stated that as a matter of law, one becomes the proximate cause of injuries later suffered by a third party as a result of the sale of liquor, when one sells liquor in wanton disregard to one's duty to third parties. *See id.* (citations omitted). A common law negligence suit may then be actionable against the vendor. *See id.* (citations omitted).

75. *See id.* at 326.

76. *See Rappaport*, 156 A.2d at 8-9.

77. *See* Sharp, *supra* note 37, at 415-16.

78. *See Rappaport*, 156 A.2d at 3.

79. *See id.*

80. *See id.* at 9.

81. *See id.* at 8. "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 dangers to others." *Id.* The court said that it is reasonable for a tavern keeper who sells alcohol to a minor to foresee the harm that may be caused by such service, when he knows or should know that the person is a minor, or one who is already intoxicated. *See id.* The court stated that the state legislature categorically denied sales to minors, as a class, based on their unique vulnerability to the effects of intoxicants. *See id.*

82. *See Rappaport*, 156 A.2d at 10.

that the violation of the regulating statutes constituted evidence of negligence on the part of the alcohol vendors that could be admitted at trial.[83]

B. The Rule of Nonliability in Arkansas: *Carr v. Turner*

Six years after the *Waynick* and *Rappaport* decisions, the Arkansas Supreme Court addressed a similar issue of alcohol vendor liability.[84] On September 22, 1961, Ruby Turner consumed alcohol at the Southern Club in Hot Springs, Arkansas.[85] The alcohol sale violated a state statute that required liquor be sold only in an unbroken package for consumption off the premises.[86] Ruby Turner left the club visibly intoxicated and drove her automobile into a parked taxicab, injuring Everette Carr.[87]

The Arkansas Supreme Court explored the possibility of liability against the server of the alcohol and recited the common law rule of nonliability.[88] The court then questioned whether two particular statutes had changed the common law rule in Arkansas.[89] The first was the unbroken package statute.[90] The court concluded that the General Assembly intended for this statute to discourage a resurgence of saloons in Arkansas and not to impose civil liability on an alcohol vendor.[91] The court also examined a statute that declared it a misdemeanor to sell or give liquor to a minor, an habitual drunkard, or an intoxicated person.[92] The court asserted, however, that most states, if not all, had similar statutes and their courts had rarely construed them to change the common law rule and establish tort liability.[93] The court noted that a small minority of jurisdictions allowed the common law rule of nonliability to be abrogated by similar statutes and cited the rule set forth in *Pratt v. Daly*.[94] In *Pratt*, the court held a tavern keeper liable for loss of consortium when he ignored a woman's warnings not to sell liquor to her husband.[95] The court also

83. *See id.* at 9.
84. *See* Carr v. Turner, 238 Ark. 889, 385 S.W.2d 656 (1965).
85. *See id.* at 889, 385 S.W.2d at 657.
86. *See id.*
87. *See id.*
88. *See id.* at 890, 385 S.W.2d at 657.
89. *See id.* at 890-91, 385 S.W.2d at 657.
90. *See* Carr v. Turner, 238 Ark. 889, 890-91, 385 S.W.2d 656, 657 (1965).
91. *See id.* This statute distinguished one form of intoxicant from another. *See id.* Restaurants and taverns could sell beer for consumption on the premises. *See id.* Such was not the case for liquor. *See id.* This apparent lack of consistency in the law's rationale led the court to believe that the legislature did not intend to impose tort liability through this statute on those who sold whiskey while immunizing those who sold beer. *See id.*
92. *See Carr*, 238 Ark. at 891, 385 S.W.2d at 657.
93. *See id.*
94. *See supra* notes 51, 53 and accompanying text.
95. *See Carr*, 238 Ark. at 891, 385 S.W.2d at 658.

cited *Rappaport v. Nichols*, but it stated that there was a significant distinction between *Pratt*, *Rappaport*, and *Carr*.[96] The court found difficulty with the wording of the Arkansas statute in that it was unlikely to limit liability only to those in the business of selling alcohol.[97] The court refused to extend liability to the dramshop owner and stated that although a dramshop act may be sound policy, it was the responsibility of the legislature to institute such a policy rather than the court.[98]

In the years after *Carr*, the Arkansas Supreme Court repeatedly held that tavern owners were not responsible for injuries that intoxicated patrons caused to third parties.[99] Each time the court considered the effects of a statute restricting alcohol sales to minors, the court refused to recognize that such statutes imposed a duty on tavern owners that abrogated the common law rule of nonliability.[100]

In *Mann v. Orrell*,[101] the court unanimously held that it did not recognize dramshop liability.[102] In that case the plaintiff alleged that the owner of a tavern failed to use ordinary care in keeping his premises safe by allowing minors to be served alcohol.[103] The court found this attempt to expand the tavern owner's liability unpersuasive.[104]

The common law rule stood until it was overruled by the *Shannon* decision.[105] Only two years after *Mann*, the court held that the regulatory nature of liquor licenses, and the statutes prohibiting the sale of alcohol to minors or intoxicated persons, imposed a duty of care to patrons and third

96. *See id.* at 891-92, 385 S.W.2d at 658.

97. *See id.* The Arkansas statute was not so narrow as to only include the sale of alcohol to minors or inebriates, thus only affecting those in the business of selling alcohol. *See id.* The language of the statute addressed giving away alcohol to a minor or an inebriate. *See id.* Thus, if this statute was interpreted to impose tort liability, that liability would extend to "a person entertaining his friends in his home." *Id.*

98. *See id.* at 892, 385 S.W.2d at 658.

99. *See, e.g.*, First Am. Bank of N. Little Rock v. Associated Hosts, Inc., 292 Ark. 445, 730 S.W.2d 496 (1987); Yancey v. The Beverage House of Little Rock, 291 Ark. 217, 723 S.W.2d 826 (1987).

100. *See* Milligan v. County Line Liquor, Inc., 289 Ark. 129, 130, 709 S.W.2d 409, 410 (1986).

101. 322 Ark. 701, 912 S.W.2d 1 (1995).

102. *See Mann*, 322 Ark. at 705, 912 S.W.2d at 3. "As we have said many times, we will not impose liability on a tavern owner for injuries resulting from the wrongdoer's intoxication." *Id.*

103. *See Mann*, 322 Ark. at 703, 912 S.W.2d at 2.

104. *See Mann*, 322 Ark. at 704-05, 912 S.W.2d at 3.

105. *See Shannon*, 329 Ark. at 160, 947 S.W.2d at 358.

parties injured by intoxicated patrons.[106] The make-up of the court had changed, and therefore, so did its analysis of old rules.[107]

IV. ANALYSIS OF THE COURT'S DECISION IN *SHANNON V. WILSON.*

In *Shannon v. Wilson*,[108] the Arkansas Supreme Court considered the question of whether Arkansas should allow a cause of action against a vendor of alcohol who illegally sold intoxicants to minors for injuries caused by those minors while intoxicated.[109] The court had held consistently that no such cause of action existed.[110] Chief Justice Arnold wrote for the majority in *Shannon*, overturning the common law rule of nonliability for alcohol vendors.[111] This Analysis section will examine the reasoning of the court in its decision to discard the common law rule in favor of the modern majority rule. The section will also address the dissent's concern that the court was blindly following the majority position among the states.[112]

A. Majority Opinion

The court began by examining the rationale for the common law rule of nonliability.[113] When the rule was created, transportation consisted primarily of walking or riding in a horse drawn carriage;[114] therefore, the sale of alcohol to a minor or intoxicated person created no unreasonable risk to the public.[115] Such is not the case today when the vast majority of transportation is by motor

106. *See id.*; McFarland, *supra* note 57, at 1A (quoting Bruce Mulkey of Rogers, Arkansas, attorney for the appellants) ("It's the first time in the history of this state that providing alcohol . . . has created a jury question as to whether or not there's negligence[.]").

107. Four of the seven Justices that sat on the *Mann* court also heard *Shannon v. Wilson*: Justices David Newbern, Tom Glaze, Donald L. Corbin, and Robert L. Brown. *See* 322 Ark. at v (1995). There were, however, three newly elected Justices: Justices W.H. "Dub" Arnold (Chief Justice), Annablle Clinton Imber, and Ray Thornton. *See* 329 Ark. at ii (1997).

108. 329 Ark. 143, 947 S.W.2d 349.

109. *See Shannon*, 329 Ark. at 146, 947 S.W.2d at 350.

110. *See id.* at 148-49, 947 S.W.2d at 351-52 (citing Mann v. Orrell, 322 Ark. 701, 912 S.W.2d 1 (1995); First Am. Bank of N. Little Rock v. Associated Hosts, Inc., 292 Ark. 445, 730 S.W.2d 496 (1987); Yancey v. The Beverage House of Little Rock, Inc., 291 Ark. 217, 723 S.W.2d 826 (1987); Milligan v. County Line Liquor, Inc., 289 Ark. 129, 709 S.W.2d 409 (1986); and Carr v. Turner, 238 Ark. 889, 385 S.W.2d 656 (1965)).

111. *See Shannon*, 329 Ark. at 146, 947 S.W.2d at 350.

112. *See id.* at 162-63, 947 S.W.2d at 359 (Newbern, J., dissenting).

113. *See id.* at 149, 947 S.W.2d at 352.

114. *See id.* at 150, 947 S.W.2d at 352.

115. *See id.*

vehicle.[116] The court recognized that drinking and driving constitutes a great risk to the public at large.[117]

When *Carr v. Turner* embraced the rule of nonliability, the court noted that the majority rule in the United States at the time was to deny such a cause of action.[118] This is also not the case today. In *Shannon*, Chief Justice Arnold listed thirty-seven jurisdictions that allow the question of dramshop liability to be a factual question for the jury to answer.[119] As those jurisdictions reconsidered their positions of nonliability, *Carr* became part of the minority that it had shunned.[120]

In the years after *Carr*, the court held repeatedly that the imposition of liability on alcohol vendors may be a desirable rule, but it was the legislature's responsibility to change the common law rule of nonliability.[121] In *Shannon*, the court reiterated its belief that legislation is the preferred means of changing the law.[122] In the face of legislative inaction, however, the court addressed the

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116. *See id.* The court stated that "[t]he reality of modern life is evidenced by the fact that most drinking establishments and liquor stores provide patrons parking lots." *Id.*

117. *See* Shannon v. Wilson, 329 Ark. 143, 150, 947 S.W.2d 349, 352 (1997) (citing the PRESIDENTIAL COMM'N ON DRUNK DRIVING, INTERIM REPORT TO THE NATION (Dec. 13, 1995) (noting that "[o]ver 250,000 people died . . . in alcohol-related motor-vehicle accidents . . . between 1980-1990")).

118. *See Carr*, 238 Ark. at 891, 385 S.W.2d at 657. "[C]ases finding liability are so few that they may be reviewed quickly." *Id.*

119. *See Shannon*, 329 Ark. at 153-55, 947 S.W.2d at 354-55 (citing Nazareno v. Urie, 638 P.2d 671 (Alaska 1981); Ontiveros v. Borak, 667 P.2d 200 (Ariz. 1983); Strang v. Cabrol, 691 P.2d 1013 (Cal. 1984); Kerby v. Flamingo Club, Inc., 532 P.2d 975 (Colo. Ct. App. 1974); Marusa v. District of Columbia, 484 F.2d 828 (D.C. Cir. 1973); Davis v. Shiappacossee, 155 So. 2d 365 (Fla. 1963); Sutter v. Hutchings, 327 S.E.2d 716 (Ga. 1985); Ono v. Applegate, 612 P.2d 533 (Haw. 1980); Alegria v. Payonk, 619 P.2d 135 (Idaho 1980); Waynick v. Chicago's Last Dep't Store, 269 F.2d 322 (7th Cir. 1959); Elder v. Fisher, 217 N.E.2d 847 (Ind. 1966); Lewis v. State, 256 N.W.2d 181 (Iowa 1977); Thrasher v. Leggett, 373 So. 2d 494 (La. 1979); Adamian v. Three Sons, Inc., 233 N.E.2d 18 (Mass. 1968); Thaut v. Finley, 213 N.W.2d 820 (Mich. 1973); Trail v. Christian, 231 N.W.2d 618 (Minn. 1973); Munford, Inc. v. Peterson, 368 So. 2d 213 (Miss. 1979); Sampson v. W.F. Enterprises, Inc., 611 S.W.2d 333 (Mo. Ct. App. 1980); Nehring v. LaCounte, 712 P.2d 1329 (Mont. 1986); Ramsey v. Anctil, 211 A.2d 900 (N.H. 1965); Rappaport v. Nichols, 156 A.2d 1 (N.J. 1959); Lopez v. Maez, 651 P.2d 1269 (N.M. 1982); Berkeley v. Park, 262 N.Y.S.2d 290 (N.Y. 1965); Hutchens v. Hankins, 303 S.E.2d 584 (N.C. Ct. App. 1983); Mason v. Roberts, 294N.E.2d 884 (Ohio 1973); Brigance v. Velvet Dove Restr., 725 P.2d 300 (Okla. 1986); Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity, 485 P.2d 18 (Or. 1971); Jardine v. Upper Darby Lodge No. 1973, 198 A.2d 550 (Pa. 1964); Scott v. Greenville Pharmacy, Inc., 48 S.E.2d 324 (S.C. 1948); Walz v. City of Hudson, 327 N.W.2d 120 (S.D. 1982); Mitchell v. Ketner, 393 S.W.2d 755 (Tenn. Ct. App. 1964); Poole v. El Chico Corp., 713 S.W.2d 955 (Tex. Ct. App. 1986); Rees v. Albertson's, Inc., 587 P.2d 130 (Utah 1978); Callan v. O'Neil, 578 P.2d 890 (Wash. Ct. App. 1978); Anderson v. Moulder, 394 S.E.2d 61 (W. Va. 1990); Sorensen v. Jarvis, 350 N.W.2d 108 (Wis. 1984); McClellan v. Tottenhoff, 666 P.2d 408 (Wyo. 1983)).

120. *See Shannon*, 329 Ark. at 152, 947 S.W.2d at 353.

121. *See Shannon*, 329 Ark. at 148, 947 S.W.2d at 351.

122. *See Shannon*, 329 Ark. at 149, 947 S.W.2d at 352.

question on its own.[123] The court then reaffirmed its power to address public policy issues to which the legislature has been inattentive.[124] The court cited *Parish v. Pitts*,[125] wherein the court asserted that it is uniquely within the power of the judicial branch to change the common law.[126] The court went further and recognized a duty on its part to change common law doctrines that have become unjust given societal changes.[127]

The *Shannon* court found unpersuasive the common law principle that the consumption of alcohol, rather than the sale of the alcohol, is the proximate cause of any resulting injuries.[128] The court stated that this rationale was no longer sound.[129] The mere existence of an intervening cause does not automatically relieve the original actor of liability.[130] Therefore, since causation is a question of fact, the rule espoused in *Carr* deprives juries of the ability to perform their basic function.[131]

Finally, the court explored the existence of a duty on the part of alcohol vendors to protect minors.[132] The legislature has declared it necessary to obtain a license to sell alcohol[133] and that a high duty of care is thereby imposed.[134] The court also recognized the existence of statutes designed to protect minors as a class from the sale of alcohol.[135] The court held that these statutes impose a high duty of care on the vendors of alcohol and that the violation of those statutes may be evidence of negligence on the part of an alcohol vendor.[136]

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123. *See id.* "Despite this Court's preference for legislative action, there has been no action directly addressing this troublesome question; so, we will address this issue now." *Id.*

124. *See Shannon*, 329 Ark. at 150, 947 S.W.2d at 352.

125. 244 Ark. 1239, 429 S.W.2d 45 (1968).

126. *See Shannon*, 329 Ark. at 151, 947 S.W.2d at 353 (citing Parish v. Pitts, 244 Ark. at 1239, 429 S.W.2d at 45).

127. *See id.*

128. *See Shannon*, 329 Ark. at 157, 947 S.W.2d at 356.

129. *See Shannon*, 329 Ark. at 157-58, 947 S.W.2d at 356.

130. *See id.* "The intervening act, itself negligent, need not be a superseding cause if its occurrence would be foreseeable to the person whose conduct is subject to inquiry. . . . A defendant may reasonably be required to guard against a foreseeable intervening cause whether or not this cause is itself negligent." Johnson, *supra* note 49, at 323-24 (citations omitted).

131. *See Shannon*, 329 Ark. at 156, 947 S.W.2d at 356.

132. *See Shannon*, 329 Ark. at 158, 947 S.W.2d at 356-57.

133. *See* ARK. CODE ANN. § 3-3-218(a) (Michie Repealed 1996).

134. *See* ARK. CODE ANN. § 3-3-218(a)-(b) (Michie Repealed 1996). The licensee is held to "a high duty of care in the operation of the licensed establishment . . . [and shall] operate the business wherein alcoholic beverages are sold . . . in a manner which is in the public interest, and does not endanger the public health, welfare, or safety." *Id.*

135. *See Shannon*, 329 Ark. at 159, 947 S.W.2d at 357. Arkansas law states that anyone who knowingly or otherwise furnishes alcohol to a minor for monetary gain shall be guilty of a Class D felony. *See* ARK. CODE ANN. § 3-3-202(b)(1)(2)(A) (Michie Repealed 1996).

136. *See Shannon*, 329 Ark. at 160, 947 S.W.2d at 357 (citing Rogers v. Stillman, 223 Ark. 779, 268 S.W.2d 614 (1954)).

In summary, the court recognized that public policy needs have changed since the adoption of the rule in *Carr*; the Court has the power to change the common law when the legislature fails to do so; a duty exists on the part of alcohol vendors to protect minors; thus, a cause of action may be stated against alcohol vendors in which proximate cause and negligence shall be questions for a jury to answer.[137]

B. Dissenting Opinion

Justice Newbern stated that it is true that the court has a responsibility to overturn a prior decision if that decision was made in error or becomes outdated.[138] He asserted that such was not the case here.[139] The rule in *Carr* was not outmoded; it was unpopular.[140] The dissent suggested that transportation has changed very little since the court first stated the rule, and then reaffirmed it over the years.[141] The dissent feared that the only difference between the past and the present was the weight of the majority.[142] The dissent noted that the court carefully analyzed the opinion in *Carr* and did not follow the majority mindlessly.[143] The court asserted in *Carr*, and in the cases that followed, that the matter of liability was best left to the legislature.[144] The dissent also questioned the majority's attempt to narrow the effects of its opinion to the illegal sale of alcohol to minors.[145] The legislature has not limited criminal sanctions to the sale of alcohol, but also includes giving alcohol to minors or inebriates as proscribed behavior.[146] Justice Newbern

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137. *See Shannon*, 329 Ark. at 156-61, 947 S.W.2d at 356-58.

138. *See Shannon*, 329 Ark. at 161, 947 S.W.2d at 358 (Newbern, J., dissenting).

139. *See id.* (Newbern, J., dissenting).

140. *See Shannon*, 329 Ark. at 163, 947 S.W.2d at 359 (Newbern, J., dissenting). "Being in a majority, like being politically correct, offers superficial comfort, but it may not be right in the long run." *Id.* (Newbern, J., dissenting).

141. *See id.* (Newbern, J., dissenting). "Citizens were not riding horses up to package-store drive-in windows in 1965, 1987, and 1995." *Id.* (Newbern, J., dissenting).

142. *See id.* (Newbern, J., dissenting).

143. *See Shannon*, 329 Ark. at 162, 947 S.W.2d at 359 (Newbern, J., dissenting).

144. *See id.* (Newbern, J., dissenting).

145. *See id.* (Newbern, J., dissenting).

146. *See Shannon*, 329 Ark. at 162, 947 S.W.2d at 358-359 (Newbern, J. dissenting). (citing ARK. CODE ANN. § 3-3-201 (Michie Repealed 1996)). This statute makes it a misdemeanor to sell, give away, or otherwise distribute alcohol to a minor "whether it is done knowingly or not." *See id.*

> Some courts reason that while such statutes prohibit 'giving away' alcohol to intoxicated persons or minors, the legislative intent was nevertheless to regulate licensed businesses and not to set a standard of care for social hosts. Other courts have refused to scrutinize liquor control statutes with such a narrow focus. These courts have concluded that the legislative purpose is to protect the public and, specifically, intoxicated minors or persons *themselves* from the harm threatened by

argued that the new rule the court enunciated may not be restricted to those who sell alcohol, legally or illegally.[147] If the public policy the majority relied upon is to protect the public from intoxicated minors, the source of the minor's alcohol does not alter that public policy.[148] The court originally articulated this concern in *Carr*.[149]

V. SIGNIFICANCE

Shannon v. Wilson has opened doors to litigation that have always been closed in Arkansas. Other states that have experienced the demise of the common law rule of nonliability saw the proverbial floodgates open for the flow of lawsuits and dollars.[150] For those injured by intoxicated drivers who purchased or consumed alcohol illegally, the new rule provides relief from the harsh common law barrier to recovery. For those persons trying to operate a legal, profitable business selling liquor, the new rule can be frightening and expensive. Finally, for those who wish to serve cocktails to their guests in their own home, the new rule may leave them feeling understandably vulnerable.

The gamut of insurance consequences is surely to be the most visible aspect of the significance of *Shannon*. Many insurance companies do not offer liquor liability coverage, and those that do are offering such coverage at a high premium.[151] Of course, the cost of insurance is a business expense that can be passed on to the consumer.[152] This rationale addresses concerns of balancing the interests of a business owner who can redistribute the costs of liability and the interests of an innocent plaintiff.[153] In the absence of the insured,

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the service of alcohol to such persons regardless of whether the alcohol is served or sold by a bartender, a liquor store or a social host.

Kelly, *supra* note 34, at 219 (citations omitted) (emphasis supplied).

147. *See Shannon*, 329 Ark. at 162, 947 S.W.2d at 359 (Newbern, J., dissenting).

148. *See id.* (Newbern, J., dissenting).

149. *See Carr*, 238 Ark. at 892, 385 S.W.2d, at 658; *see supra* notes 97 and 144 and accompanying text.

150. *See* James M. Goldberg, *One For the Road, Liquor Liability Broadens*, A.B.A. J., June 1987, at 84-86. A wrongful death claim in Michigan against an alcohol vendor ended with a $10.8 million settlement, which included a $3 million cash payment; also, two widows in Ohio brought a $24 million suit against a tavern after their husbands' deaths in a car accident. *See id.* at 84. "Though definitive statistics are not available, some knowledgeable observers peg the growth rate of alcohol server liability litigation at 300 percent a year." *Id.*

151. *See id.* at 86. "My regular carrier refused to write it. I had to switch to a different company. . . . [I]t's going to be high. But I feel like I have to have it. I think everybody in the state who owns a liquor store will have to have it." Doug Smith, *The Cost of Selling Alcohol Just Went Up*, ARK. TIMES, Aug. 1, 1997, at 8 (quoting a Little Rock liquor store owner in response to *Shannon*).

152. *See* Johnson, *supra* note 49, at 330.

153. *See* Johnson, *supra* note 49, at 330.

vicariously liable alcohol vendor, the innocent plaintiff may well suffer at the hands of a guilty, but judgment proof, tortfeasor.[154] Of course, this logic does not seem so fair and equitable to the alcohol vendor. The liquor and insurance lobbies have fought back in several states, and anti-dramshop legislation has been enacted in an attempt to limit liquor liability.[155] One leverage point on this side of the movement is the privilege of insurance companies to choose not to insure, thus leaving the state to form insurance pools.[156]

For the average citizen, the establishment of social host liability in Arkansas may be a frightening consequence of *Shannon*. The dissenting opinion reiterated the problem with basing dramshop liability on the current statute in Arkansas.[157] The Arkansas statute that makes it a felony to sell alcohol to minors also makes it unlawful to give away alcohol.[158] This may be interpreted as opening the area of social host liability, as has been the case in other jurisdictions.[159] Social host liability, however, is a remedy that courts rarely make available because it is contrary to the general expectations of American society.[160]

The significance of *Shannon* has yet to be seen. Surely, trial lawyers will be anxious to cut their teeth on this new avenue of liability; the insurance industry will seek to limit its liability to injured plaintiffs; and the average social host may hold his breath, and perhaps his bottle, until the court speaks on the issue again. The majority in *Shannon* stated that it made its decision in the light of legislative inaction and invited the legislature to speak up if it

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154. *See* Johnson, *supra* note 49, at 330.

155. *See* Goldberg, *supra* note 149, at 88. "The trend in legislation is toward limiting liquor liability. Legislatures in nineteen states enacted new laws or amended existing dramshop statutes in 1986. Most of *these* measures had the effect of limiting commercial server or social host liability in some form." Goldberg, *supra* note 149, at 88 (emphasis supplied).

156. *See* Goldberg, *supra* note 149, at 86. At least three states have established "state-operated insurance pools" in order to distribute the costs of and coverage for liquor liability. *See* Goldberg, *supra* note 149, at 86.

157. *See Shannon*, 329 Ark. at 162, 947 S.W.2d at 359 (Newbern, J., dissenting).

158. *See* ARK. CODE ANN. § 3-3-202(a)(1) (Michie Repealed 1996).

159. *See* Weiner v. Gamma Phi Chapter of Alpha Tau Omega Fraternity, 485 P.2d 18 (Or. 1971).

160. *See* Smith, *supra* note 151, at 8 (quoting Prof. Andrew J. McClurg, of the UALR School of Law) ("[S]ocial host liability . . . [is] rare . . . . The vast majority of courts have rejected it. They make the distinction that a commercial enterprise is in a much better position to insure against the risks.").

disagreed with the court's holding.[161] It will be interesting to see what, if anything, the legislature has to say.

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161. *See Shannon*, 329 Ark. at 151, 947 S.W.2d at 353. "There *has* been legislative action. The Legislature has chosen not to pass a law." McFarland, *supra* note 57, at 1A (quoting Bill Brady, lobbyist for the Distilled Spirits Council of the United States) (emphasis added). Dramshop bills were introduced to the General Assembly on several occasions, but none ever passed through the House Rules Committee. *See* McFarland, *supra* note 57, at 1A.