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that this style is more likely to violate the right of privacy than conventional newspaper reporting[34] and is a proper factor for consideration in a privacy action. Since the purpose for using the "story" style of writing is to make the article more sensational in order to attract additional readers, the publisher by this action has ceased to be concerned primarily with giving news to the public, and has concerned himself more with obtaining a profit at the expense of the plaintiff's feelings. Moreover, the fictional style aggravates the injury to the plaintiff's feelings because its inherent vividness attracts a wider reading public and leaves a more lasting impression.

In *Aquino,* the court properly considered the right of privacy in light of modern views and decisions. It applied the decency test by weighing the value of the article as news against the invasion of the plaintiff's privacy. While the court examined the article as a whole, the fictional style was treated as an important element in reaching its decision. By using this method, the court concluded that the right of privacy can be invaded by a wrongful presentation of privileged material.

E. J. SULZBERGER, JR.

VENDOR'S LIABILITY WITH REGARD TO SALE OF INTOXICANTS

"Evils of intoxication are on record as far back as Noah."[1] Notwithstanding, the question remains as to where responsibility for this evil should be imposed. The overindulger may be held liable for his own acts in both criminal[2] and civil[3] proceedings; a more difficult problem is whether liability also attaches to the person who serves intoxicating liquor to a minor or an already intoxicated adult, who subsequently causes damage to persons or property. With regard to this problem it has been asserted that the burden should be placed on the vendor of the liquor rather than on the injured parties or the general public, since the consumer is often judgment-proof.[4]

Two methods are used to impute liability to a tavernkeeper. First, under Dram Shop or Civil Damage Acts in force in twenty jurisdic-

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[34]Ibid.

[1]State ex rel. Joyce v. Hatfield, 179 Md. 249, 78 A.2d 754, 756 (1951).

[2]Slough, Some Legal By-Products of Intoxication, 3 Kan. L. Rev. 181 (1955).

[3]McCoid, Intoxication and Its Effect Upon Civil Liability, 42 Iowa L. Rev. 38 (1956).

[4]Note, 8 Syracuse L. Rev. 252 (1957).

tions,[5] the injured party is given a direct cause of action against the vendor of the liquor which is tantamount to imposing absolute liability.[6] In the absence of such a statute, liability can only be imposed by the use of common law tort principles. The overwhelming weight of authority holds that the seller is not liable because the proximate cause of the injury is the drinking, not the selling, of the liquor.[7]

This reasoning has undergone some modification.[8] An action has been allowed to a personal representative when it was obvious that there had been a complete, and perhaps wanton, disregard for the welfare of the overindulgent decedent, who could not even take care for his own self-preservation.[9] Also, a wife has been allowed to recover from a vendor, who, over her protest, sold liquor to her husband with knowledge that he was an habitual drunkard.[10]

Beyond these modifications, the common law rule of non-liability has been clearly abandoned in several jurisdictions. In Pennsylvania, which recently repealed its Dram Shop Act, the violation of a liquor statute was used in an ordinary tort action[11] to establish negligence when the plaintiff was injured by a fellow patron.[12] The Court of Appeals for the Seventh Circuit reached the same result in *Waynick v.*

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[5]A list of states currently having such statutory enactments can be found in 4 S.D.L. Rev. 149 n.2 (1959).

[6]See Prosser, Torts § 61, at 345 (2d ed. 1955). This absolute liability is criticized in 4 Vill. L. Rev. 575 (1959).

[7]Fleckner v. Dionne, 94 Cal. App. 2d 246, 210 P.2d 530 (Dist. Ct. App. 1959); Noonan v. Galick, 19 Conn. Supp. 308, 112 A.2d 892 (1955); Howlett v. Doglio, 402 Ill. 311, 83 N.E.2d 708 (1949); Duckworth v. Stalnaker, 68 W. Va. 197, 69 S.E. 850 (1910). See generally Annot., 130 A.L.R. 352 (1941).

[8]One modification more apparent than real, occurred in California recently. There a cause of action was permitted under a unique view of proximate cause: that the drinking and the selling merged to become the proximate cause of the accident. Cole v. Rush, 271 P.2d 47 (Cal. 1954). However when the trial court sustained for the second time a demurrer to the complaint, the California Supreme Court in affirming, ignored the merger theory. Cole v. Rush, 45 Cal. 2d 345, 289 P.2d 450 (1955).

[9]Nally v. Blandford, 291 S.W.2d 832 (Ky. 1956); Ibach v. Jackson, 148 Ore. 92, 35 P.2d 672 (1934).

[10]Pratt v. Daly, 55 Ariz, 104 P.2d 147 (1940). This case relied on an analogy between liquor and drugs. See 14 So. Cal. L. Rev. 91 (1940), for a note supporting this approach. In the same vein, it has been held that a wife has a direct action against the vendor for the loss of consortium due to habitual intoxication. Swanson v. Ball, 67 S.D. 161, 290 N.W. 482 (1940).

[11]Schelin v. Goldberg, 188 Pa. Super. 341, 146 A.2d 648 (1954). This case is criticized in 20 U. Pitt. L. Rev. 876 (1959) as being judicial legislation.

[12]Other states have allowed such an action when the plaintiff was injured by a fellow patron, but on analysis they seem to turn on the duty owed an invitee, rather than the violation of a liquor law. Cherbonnier v. Rafalovich, 88 F. Supp. 900 (D. Alaska 1950); Thomas v. Bruza, 311 P.2d 128 (Cal. Dist. Ct. App. 1957); Adamson v. Gand, 93 Ga. App. 5, 90 S.E.2d 669 (1955).

Chicago's Last Dep't Store[13] by finding the defendant negligent in selling liquor to an already intoxicated adult in violation of an Illinois statute making the sale a criminal offense. In both cases the troublesome proximate cause question was disposed of by holding that the *selling* was the proximate cause of the injury. In view of these decisions, it would appear that the non-liability of the tavernkeeper under traditional tort theories is not so clearly established as language in the cases would seem to indicate.

The most recent case dealing with the problem is *Rappaport v. Nichols*,[14] which presented for the first time since New Jersey repealed its Dram Shop Act in 1934 the problem of whether the intervening negligence of the minor superseded the alleged negligence of the tavernkeeper. Nichols was served liquor under circumstances that gave notice that he was a minor and could not be legally served. Nichols became intoxicated and later negligently killed the plaintiff's son in an automobile accident. In the plaintiff's action against Nichols and the persons who served liquor to him, the lower court held, as a matter of law, that the complaint failed to state a cause of action.[15] The supreme court reversed and remanded.

The court based the tavernkeeper's negligence on two grounds. First, the act of the tavernkeeper violated a statute forbidding the sale of liquor to minors or apparently intoxicated adults. Although the violation of a criminal statute is ordinarily only some evidence of negligence in New Jersey,[16] the court cited *Schelin v. Goldberg*,[17] in which a negligence per se rule was applied under common law principles, just as it has been in Pennsylvania since the repeal of its Dram Shop Act.[18]

The second basis was the implied use of traffic accident statistics[19] to show that the tavernkeeper could foresee that he was helping to create an unreasonable risk of harm to third persons because of the carelessness of an intoxicated person. However, the facts as presented

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[13]269 F.2d 322 (7th Cir. 1959).

[14]31 N.J. 188, 156 A.2d 1 (1959).

[15]However, the appeal "addresses itself entirely to the issue of whether the plaintiff's complaint against the tavern keepers sets forth a common law cause of action grounded on negligence." 156 A.2d at 4.

[16]Evers v. Davis, 86 N.J.L. 196, 90 Atl. 677 (1914). Prosser, Torts § 30 at 122 (2d ed. 1955) states this to be the rule of the case. For a different interpretation of the case, see Note, 32 Colum. L. Rev. 712 (1932).

[17]188 Pa. Super. 341, 146 A.2d 648 (1958).

[18]McKenney v. Foster, 391 Pa. 221, 137 A.2d 502 (1958); Manning v. Yokas, 389 Pa. 136 132 A.2d 198 (1957).

[19]This has the prior support of the New Jersey Supreme Court. Bohn v. Hudson & Manhattan R., 16 N.J. 180, 108 A.2d 5 (1954).

in the opinion do not show that the defendant had either actual[20] or constructive[21] knowledge that Nichols would be driving a car.

After establishing the negligence[22] of the defendants, the court considered the question of proximate cause. The court on this point simply stated that the defendant's negligence could be the proximate cause of the plaintiff's injury. Although this is a departure from the conventional approach,[23] there are several valid reasons for the deviation.

Undoubtedly the liberal position[24] of the New Jersey courts with regard to the outer limits of liability is an important factor. *Lutz v. Westwood Transp. Co.*[25] enunciated the liberal approach as follows:

> "The obligation to respond in damages for negligent acts is not limited to those injuries and damages or consequences which might reasonably have been anticipated. At present the tort-feasor is generally answerable for an injury that results from his wrongful act *in the ordinary course of events.*"[26]

Another factor explaining the deviation is the extremely restrictive definition of superseding cause followed in New Jersey. In determining whether an intervening cause superseded the defendant's liability, the New Jersey court in *Daniel v. Gielty Trucking Co.*[27] stated:

> "It is a superseding cause, whether intelligent or not, if it so entirely supersedes the operation of the defendant's negligence that it alone, *without his negligence contributing thereto in the slightest degree, produces the injury.*"[28]

In the light of this liberal definition of proximate cause, and this restrictive definition of superseding cause, the Supreme Court of New

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[20]In Fleckner v. Dionne, 94 Cal. App. 2d 246, 210 P.2d 530 (Dist. Ct. App. 1949), a cause of action was not allowed, even though defendant sold liquor to a minor knowing he would drive a car and the minor later injured the plaintiff.

[21]Constructive, in the sense that the roadhouses involved were located at some distance from a populated area, and therefore the tavernkeeper could foresee that customers would arrive by automobile.

[22]This is a prerequisite to any successful action for negligence. While New Jersey has not adopted the elements of a cause of action as set forth in Restatement, Torts § 281 (1948), liability is imposed within the limits of this general principle. See Hoff v. Public Serv. Ry., 91 N.J.L. 461, 103 Atl. 209 (1918).

[23]See note 7 supra and accompanying text.

[24]See Hartman v. City of Brigantine, 42 N.J. Super. 247, 126 A.2d 224 (App. Div. 1956), aff'd, 23 N.J. 530, 129 A.2d 876(1957); Mitchell v. Friedman, 11 N.J. Super. 344, 78 A.2d 417 (App. Div. 1951); Mulquinn v. Lock Joint Pipe Co., 12 N.J. Super. 467, 80 A.2d 634 (App. Div. 1951).

[25]31 N.J. Super. 285, 106 A.2d 329 (App. Div. 1954), cert. denied, 16 N.J. 205, 108 A.2d 120 (1954).

[26]106 A.2d 329, 331 (1954). (Emphasis added.)

[27]116 N.J.L. 172, 182 Atl. 638 (1936).

[28]182 Atl. 638, 639 (1936).