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James Burstein

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## CRIMINAL LAW—LIABILITY OF ADULT HOST FOR GIVING ALCOHOLIC BEVERAGES TO MINOR GUESTS

Dr. and Mrs. George Hughes were found guilty of violating a Connecticut statute which forbade the sale of liquor to minors.<sup>1</sup> They were each fined \$500 for serving alcoholic beverages to their minor guests at a lawn party. The Circuit Court of Connecticut, Appellate Division, stated that the legislative intent of liquor control legislation should be liberally construed in the public welfare to restrain alcoholic indulgence by minors. Consequently, the statute was determined to apply equally to permittees and non-permittees who give alcoholic liquors to minors other than their own children. *State v. Hughes*, 3 Conn. Cir. 181, 209 A.2d 872 (1965), *petition for certification denied*, 209 A.2d 189 (1965).

The aftermath of the Hughes lawn party was the death of a seventeen year old girl in a car collision. The girl was the passenger in a car driven by another guest. The driver was convicted of reckless driving and negligent homicide.<sup>2</sup> Because of such unfortunate occurrences, the majority of courts feel that a liberal interpretation of liquor control legislation is needed.<sup>3</sup> The *Hughes* case shows that legislation which prohibits the sale of liquor to minors can include the gift of alcoholic beverages to minors by a non-licensee, even though such acts occur in the privacy of a home.

The defendants contended that the Connecticut statute<sup>4</sup> dealt primarily with commercial liquor traffic, relying heavily on the belief of Professor Wharton to the effect that when such a statute appears from its title to

<sup>1</sup> CONN. GEN. STAT. ch. 545, § 30-86 (1958): "Sales to minors . . . Any permittee who, by himself, his servant, or agent, sells or delivers alcoholic liquor to any minor . . . and any person, except the parent or guardian of a minor, who delivers or gives any such liquors to such minors, except on the order of a practicing physician, shall be subject to the penalties of section 30-113."

<sup>2</sup> TIME, Oct. 23, 1964, p. 59.

<sup>3</sup> There is no universal judicial policy adopted by the courts in construing liquor control laws, although the prevailing and preferred construction given by the various jurisdictions is a liberal interpretation.

<sup>3</sup> SUTHERLAND, STATUTORY CONSTRUCTION § 7203 (3rd. ed. 1943); *State v. Small*, 99 N.H. 349, 111 A.2d 201 (1955); *Commonwealth v. Randall*, 183 Pa. Super. 603, 133 A.2d 276 (1957); *State v. Mapes*, 248 Iowa 39, 79 N.W.2d 202 (1956); *Parkinson v. State*, 14 Md. 184, 74 A.D. 522 (1859); *Johnson v. People*, 83 Ill. 431 (1876). *Accord*, *Commonwealth v. Davis*, 75 Ky. (12 Bush) 240 (1876). See *State v. Sifford*, 51 N.M. 430, 187 P.2d 540 (1947); *State v. Cummings*, 63 N.M. 337, 319 P.2d 946 (1957); *State v. Stock*, 169 Minn. 364, 211 N.W. 319 (1926); *People ex rel. Krause v. Harrison*, 191 Ill. 257, 61 N.E. 99 (1901); *United States v. Katz*, 271 U.S. 354 (1926). *Silverhorn v. State*, 358 P.2d 226 (1960). *Contra*, *People v. Armstrong*, 24 Misc. 2d 53, 203 N.Y.S.2d 552 (1960). But see *Albrecht v. People*, 78 Ill. 510 (1875).

<sup>4</sup> *Supra* note 1.

relate to the business of manufacturing, selling and giving of intoxicating beverages to minors, it does *not* prohibit the giving of intoxicating liquors as a mere act of hospitality of the home.<sup>5</sup> The defendants claimed their acts were not embraced within the terms of the statute, since their acts were those of a host being hospitable to a guest in the host's own residence. The defendants contended that if the latter portion of the pertinent section of the statute, including the phrase "and any person," was construed otherwise, it would be the only non-commercial regulation of the use of alcohol within the entire Liquor Control Act, and would therefore be inconsistent with the general nature of it. Liberal interpretation of this statute would most certainly subject the defendant to liability. This construction would extend liability to any person who delivers liquor to a minor, rather than restrict the statute's application to individuals involved in commercial transactions.

Moreover, defendants urged the court to apply the statutory rule of construction, *ejusdem generis*, in order to show that it was not the intent of the legislature to include non-permittees in the phrase "and any person." The doctrine of *ejusdem generis* provides that where "general words follow specific words in an enumeration describing the legal subject, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. . . ."<sup>6</sup> Defendants argued that "any person" referred only to words similar to any permittee, his servant or agent. Courts in New Hampshire and Pennsylvania have analyzed statutes<sup>7</sup> similar to that of Connecticut in regard to delivery of intoxicating beverages to minors by non-licensees, and, as in *Hughes*, the defendants' arguments advocating *ejusdem generis* were unsuccessful.<sup>8</sup>

Courts cannot apply this rule of statutory construction to defeat the legislative intent by confining the operation of a statute within narrower

<sup>5</sup> 3 WHARTON, CRIMINAL LAW & PROCEDURE § 1045 (12th ed. 1957).

<sup>6</sup> 2 SUTHERLAND, STATUTORY CONSTRUCTION § 4909 (3rd ed. 1943).

<sup>7</sup> In the following statutes, as in the Connecticut Act under consideration, the legislative intent is clear; that is, the statutes will apply to any person who gives liquor to a minor:

NEW HAMP. REV. STAT., ch. 175, § 6 (1955): "Prohibited Sales. No licensee, sales agent, nor *any other person*, shall sell or give away or cause or permit or procure to be sold, delivered or given away any liquor or beverage to a minor . . ." (emphasis added).

PENN. STAT. ANN., tit. 47, § 4-493 (1951): "Unlawful acts relative to liquor, malt, and brewed beverages and licensees. It shall be unlawful (1) For any licensee or the board, or any employee, servant or agent of such licensee or of the board, or *any other person*, to sell, furnish or give any liquor or malt or brewed beverages to be sold, furnished, or given, to . . . any minor . . ." (emphasis added).

<sup>8</sup> State v. Small, 99 N.H. 349, 111 A.2d 201 (1955); Commonwealth v. Randall, 183 Pa. Super. 603, 133 A.2d 276 (1957).

limits that the lawmakers clearly express.<sup>9</sup> The United States Supreme Court succinctly appraised the rule's effect in *Helvering v. Stockholm's Enskilda Bank*<sup>10</sup> and recognized that it is only one of many canons of statutory construction which must be applied to determine the true legislative intent of a statute. The Court stated:

If upon a consideration of the context and objects sought to be attained, and of the act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, we must give effect to the conclusion afforded by the wider view in order that the will of the legislature shall not fail.<sup>11</sup>

The Connecticut court, through its examination of the Act as a whole, and the latter portion of the pertinent section in particular, held that this specific section has been in effect without significant change for over fifty years.<sup>12</sup> On the basis of the language of the statute, the rule of *ejusdem generis* was held inapplicable. Should the court have applied the doctrine, the intent of the legislature would have been destroyed.

The court's holding emphasizes that the section of the statute directly under review has only one objective: to prevent minors from acquiring liquor "through the act of any intervening human agency, unless exempted by statute."<sup>13</sup> In regard to the issue of serving liquor to a minor in a private home as an act of hospitality, if a minor is actually served in a jurisdiction where there is a statute which prohibits any person from delivering or giving liquor to a minor, the fact that the act occurred in a private home does not sanctify it and make it legal. Sales of intoxicants to minors is uniformly prohibited in all jurisdictions as a matter of public welfare. Where the terms of a statute are broad, gratuitously supplying liquor to minors has long been considered an indictable offense in such jurisdictions.<sup>14</sup> If a statute prohibits either the giving or furnishing of

<sup>9</sup> It is to be noted that *ejusdem generis* as a rule of construction, applies primarily if there is no clear manifestation of a legislative intent that the general term be given a broader meaning than the doctrine requires. For further expansion, see 2 SUTHERLAND, STATUTORY CONSTRUCTION § 4910 (3rd ed. 1943); 50 AM. JUR. Statutes § 250 (1944). See also, *People ex rel. County of Du Page v. Smith*, 21 Ill. 2d 572, 173 N.E.2d 485 (1961).

<sup>10</sup> 293 U.S. 84 (1934).

<sup>11</sup> *Id.* at 88. *Accord*, *U.S. v. Alpers*, 338 U.S. 680 (1950), wherein the court refused to apply *ejusdem generis* to a defendant who had shipped obscene phonograph records in violation of a statute making illegal interstate shipment of obscene book, pamphlet, picture, motion-picture film, or other matter of indecent character. The Court indicated that such application of the rule would defeat the obvious legislative intent.

<sup>12</sup> CONN. PUBLIC ACTS ch. 10, p. 7 (1913).

<sup>13</sup> *State v. Hughes*, 209 A.2d 872, 880 (Conn. 1965).

<sup>14</sup> BLACK, INTOXICATING LIQUORS, § 415, (1892). For example, in *Commonwealth v. Davis*, *supra* note 2, defendant, a nonlicensee, was convicted for providing a minor with liquor in exchange for money furnished by the minor. This transaction was

liquors to minors, the law has been extended to both liquor dealers and to those who buy liquor and furnish it to the minors. Alcoholic beverage control statutes are generally enacted with the intent they will serve both as penal and remedial legislation. *Black's Law Dictionary* defines a remedial statute as one "that is designed to correct an existing law, . . . or introduce regulations conducive to the public good."<sup>15</sup> Courts recognize that remedial statutes require a liberal construction in order to give effect to the manifest purpose for which the legislation was enacted,<sup>16</sup> and one basic intent of liquor control legislation is to be remedial of abuses inherent in liquor traffic.<sup>17</sup> The intent of remedial legislation that prohibits any person from giving liquor to minors, like legislation prohibiting such sales, is also in furtherance of the public welfare. Whether the act of extending liquor to minors occurs in the home or a business establishment, saloon, or restaurant is not important. Liability for the act attaches to the issuer of such intoxicants.

The court's opinion expressed the view that such application would also violate other equally important rules of statutory interpretation, including the canon against redundancy,<sup>18</sup> and the rule which requires that effect be given to every word in a statute.<sup>19</sup> Effect must be given, if possible, to every word, clause, and sentence of a statute so that no part will be inoperative or superfluous, void or insignificant.<sup>20</sup> If the words "any person" in the Connecticut Act had reference only to those persons involved in a transaction with minors on commercial premises which are licensed to sell intoxicants, the phrase would be redundant and superfluous because those individuals had been previously enumerated within the section.

To alleviate the statutory construction difficulties created by such problems, Illinois amended its liquor control statute in 1963, to include a pro-

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in violation of a statute which made it an offense for any person to sell, lend, or give any liquor to a minor. In *State v. Adamson*, 14 Ind. 296 (1860), defendant, a nonlicensee, was convicted for giving liquor to a minor in violation of a statute entitled "An Act to regulate and license the sale of liquors." The Act made it an offense to sell, barter, or give away any intoxicating liquor to a minor. The court held that the giving was properly connected with subject of the title, because it should be regarded as a necessary incident to a statute regulating the sale. See also, *Johnson v. People*, 83 Ill. 431 (1876). *Contra*, *People v. Bird*, 138 Mich. 31, 100 N.W. 1003, (1904).

<sup>15</sup> BLACK, LAW DICTIONARY (4th ed. 1951).

<sup>16</sup> *Merchant's Bank & Trust Co. v. Pettison*, 112 Conn. 652, 654, 153 Atl. 789, 790 (1931).

<sup>17</sup> *Blank v. Mayor & Borough Council of Magnolia*, 38 N.J. 484, 185 A.2d 862 (1962).

<sup>18</sup> 50 A.M. JUR. *Statutes* § 359 (1944). See U.S. *ex rel. Boscola v. Bledsoe*, 152 F. Supp. 343, 345 (N.D. Wash. 1956).

<sup>19</sup> 2 SUTHERLAND, STATUTORY CONSTRUCTION § 4705 (3rd ed. 1943).

<sup>20</sup> See *State v. Bartley*, 39 Neb. 353, 58 N.W. 172 (1894).

gressive remedial liquor control provision which prohibits the gift of alcoholic liquor to a minor by anyone.<sup>21</sup> This amendment corrected inherently defective legislation which had prohibited only licensees from giving intoxicants to minors.<sup>22</sup> At this writing, no court of review has construed this amendment in regard to the issue of a non-licensee furnishing liquor to minors in a private home.<sup>23</sup>

The holding in the case at bar represents the definite trend toward liberal interpretation of liquor control statutes. Legislation prohibiting liquor sales or gifts to minors includes gifts of intoxicating beverages to minors at private parties in the home. The legislative intent has clearly been to restrain consumption of alcoholic liquor by minors. In order to implement the legislative intent, courts are finding it necessary to reject the statutory rule of construction, *ejusdem generis*, which would place a strict interpretation on the phrase *any person*, in favor of rules which require that every word in a statute be construed so that none are redundant or superfluous. Preference for this latter construction affirms the trend toward liberal interpretation of alcoholic beverage control laws.

*James Burstein*

<sup>21</sup> ILL. REV. STAT. ch. 43, § 131 (1963). It is interesting to note that the Liquor Control Act was amended in 1965 to allow minors to consume alcoholic beverages in the privacy of a home under the direct supervision and approval of the parents. 73rd ILL. GEN. ASS. H. B. 470, approved August 6, 1965, amending ILL. REV. STAT. ch. 43, § 134(a) (1963).

<sup>22</sup> ILL. REV. STAT. ch. 43, § 38 (1934): "No licensee shall give, or deliver alcoholic liquor to any minor. . . ."

<sup>23</sup> ILL. REV. STAT. ch. 43, § 131 (1963). This amendment has not been construed up to and including cases reported in 209 N.E. 2d 648 (1965). See also, Comment, 37 CHI.-KENT L. REV. 123 (1960), wherein the commentator suggested that a non-commercial host may be liable in tort "[d]espite reported decisions touching on the matter of non-commercial host liability, in the face of the legislative intent and other persuasive elements, it seems reasonable to conclude a corporate host who conducts an Office Christmas Party or Hospitality Room serving intoxicating beverages will find itself subject to civil damages as a tortfeasor under the Liquor Control Act." (*Id.* at 128.)

## CRIMINAL PROCEDURE—EFFECT OF SUBSEQUENT SUPREME COURT DECISION—RETROSPECTIVE APPLICATION OF JACKSON v. DENNO<sup>1</sup>

In 1960, Charles Huntley was tried for first degree robbery. A complete confession by the defendant was entered into evidence, and in accordance with existing New York procedure, the issue of the voluntariness of the confession was submitted as a question of fact to the same jury that determined guilt. The jury returned a general verdict of guilty with-

<sup>1</sup> 378 U.S. 368 (1964).