

## LAW

**CHILDS VS. DESORMEUX (2006)  
 SUPREME COURT OF CANADA**
**The Facts**

On New Year's Eve 1998, Julie Zimmerman and Dwight Courier hosted a potluck supper and BYOB house party in an Ottawa suburb, which was attended by several relatives and friends; Desmond Desormeaux, a longtime friend of Courier, was among the invited guests. He and two friends drove to the party in a car he had recently inherited, but he didn't have insurance for the car. Desormeaux was a self-described alcoholic with two prior impaired driving convictions. He had also been convicted of driving while his license was suspended in 1996. Desormeaux had, in the past, frequently slept over at the social hosts' home when he had had too much to drink, but not this time.

At about 1:30 am on January 1, 1999, Desormeaux left the party, and his vehicle crossed the centre line of the highway and crashed into the path of an oncoming vehicle in which Zoe Childs and her boyfriend, Derek Dupre, were riding in the back seat. Dupre was killed and Ms. Childs, 17 at the time, was rendered a paraplegic. All of the other passengers in both cars were seriously injured.

Desormeaux's blood sample taken following the accident showed he had a blood-alcohol reading almost three times the legal limit. Childs sued Desormeaux and the social hosts Zimmerman and Courier for \$2.3 million in damages. The trial judge held Desormeaux liable for the injuries to Childs and the other plaintiffs. He further held that if Courier and Zimmerman were also liable, he would apportion liability as between the defendants 85 per cent to Desormeaux and 15 per cent to Courier and Zimmerman. But he dismissed the action, stating that it should be left to the government to determine a social host liability and to properly compensate the innocent victims.

Childs appealed this decision to the Ontario Court of Appeal, which, in a unanimous judgment on May 19, 2004, also dismissed her claim. Childs appealed this decision to the Supreme Court of Canada where the appeal was heard on January 18, 2006. Like the Ontario Court of Appeal, the Supreme Court ruled that Zimmerman and Courier did not owe duty of care because the relationship between the hosts and the guest was not proximate enough to ground a duty of care. The reason for this was primarily due to the fact that they did not serve alcohol to Desormeaux therefore did not know that he was intoxicated, they did not assume control over the service of alcohol, there was no statute imposing a duty to monitor drinking on social hosts, and the hosts did not otherwise assume responsibility for Desormeaux's safety.

**Questions**

1. Use the 5 steps of the tort of negligence to defend the Supreme Court of Canada's decision.
2. A) Compare this case with *Prevost v. Vetter* (2002). How is it that Zimmerman and Courier were not held liable but Shari and Greg Vetter were?
  - B) Assume you have been hired by an insurance company to make recommendations for social hosts with steps to be taken in an effort to reduce exposure to liability. In small groups, discuss what hosts might do and then make a list of at least four recommendations.