COCKTAILS ON CAMPUS: ARE LIBATIONS A LIABILITY?

Susan S. Bendlin, Barry University
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By Susan S. Bendlin

“It would be unrealistic to impose upon an institution of higher education the additional role of custodian over its adult students and to charge it with responsibility for preventing students from illegally consuming alcohol and, should they do so, with responsibility for assuring their safety and the safety of others.”

I.  INTRODUCTION

An estimated 1,825 college students die each year from alcohol-related, unintentional injuries. Roughly 599,000 students between the ages of 18 and 24 are injured every year while under the influence of alcohol. More than 100,000 students reported that they were too intoxicated to know whether they had consented to having sex, and an estimated 97,000 students are victims of alcohol-related sexual assault or date rape in a typical year. College students report a higher binge-drinking rate and are involved in more drunk driving incidents than 18–24 year olds who are not in college.

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1 Associate Professor, Barry University School of Law, and former Dean of Students at Emory University School of Law, Duke University School of Law, and Barry University School of Law. The author wishes to thank her research assistants, Mario Raya (J.D. anticipated, 2016) and Christian Tiblier (J.D. anticipated, 2016).

2 Beach v. University of Utah, 726 P.2d 413, 419 (Utah 1986).


4 Id.

5 Id.; see also, REPORT OF THE WHITE HOUSE COUNCIL ON WOMEN AND GIRLS, RAPE AND SEXUAL ASSAULT: A RENEWED CALL TO ACTION, 10 (2014), indicating that one in five college women are sexual assault victims. Further, the report finds that “the dynamics of college life appear to fuel the problem” and that many sexual assaults occur when the victim is “drunk, under the influence of drugs, passed out, or otherwise incapacitated.” Id. at 14. While fifty-eight percent of these incapacitated assaults take place at college parties, the April 2014 Task Force Report did not dwell on college parties or alcohol abuse as the catalyst of these assaults, but focused instead on the larger problem of victims of sexual assault being viewed negatively by the community. See, WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT, NOT ALONE: THE FIRST REPORT OF THE WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT, 7 (2014).

Tales of intoxicated college students’ wild, disgusting, and often violent behavior have made the national news. For example, at a fraternity party at the University of Central Florida, police arrived to find one student lying in a puddle of his own vomit and several other students passed out in the yard. Another situation involved freshmen cheerleaders at Towson University who were told last year to “funnel a beer or take a shot of alcohol” before donning adult diapers over their shorts and performing a dance for other cheerleaders. At Occidental College, a freshman was raped twice by her friend after both had been drinking. A group of graduating students at the University of Virginia gathered for shots of vodka and tequila at 7:00 a.m. before the formal ceremony. These and similar scenarios are not surprising to college administrators, who report that alcohol consumption is a factor in many students’ problems, including mental health issues, fights, rape, alcohol poisoning, traffic accidents, and other serious injuries as well as poor academic performance.

7 Leslie Postal, Wild, Boozy Party Brings Suspension to UCF’s ATO Frat, ORLANDO SENTINEL, Sept. 5, 2013, at A1 (indicating that ATO was suspended for a year for hosting an unauthorized house party and serving alcohol to underage students, among other violations).
12 GORDIE CENTER FOR SUBSTANCE ABUSE PREVENTION, http://gordiecenter.studenthealth.virginia.edu/ (last visited July 25, 2014). The nonprofit Gordie Foundation was named for Lynn Gordon “Gordie” Bailey Jr., who died of an alcohol overdose at the University of Colorado after a fraternity initiation ceremony on September 17, 2004. In the summer of 2010, the Gordie Foundation merged with the Center for Alcohol and Substance Education at the University of Virginia. The Center honors Gordie’s memory by “creating and distributing programs to reduce hazardous drinking and promote peer intervention among young adults.”
Alcohol abuse on college campuses is not a recent development unique to the current generation of college students. College freshmen have been surveyed annually since 1966, and the data shows that the number of students who report drinking “frequently” or “occasionally” has slightly declined in recent years. In 1966, 53.5% of all freshmen reported drinking beer frequently or occasionally, and 44.4% reported drinking wine. Beer drinking increased during the late 1970s and early 1980s; specifically, in 1978, 73.2% said they drank beer and in 1982 75.1% reported drinking beer. That figure dropped to 48.3% in 2000 and to 35.0% in the entering class of 2013 (the most recent data). Those students who drink to excess attract attention and cause other students to perceive that heavy drinking on campus is fairly common, but statistics show that a relatively small percentage of students are binge drinkers. Nonetheless, excessive drinking by those students does lead to significant problems, as demonstrated by the 67% increase in hospitalizations for eighteen to twenty-four-year-olds due to alcohol overdoses from 1999 to 2008.

13 See http://www.heri.ucla.edu/tfsPublications.php. Researchers at the University of California-Los Angeles have conducted a comprehensive survey of college freshman every year since 1966. In most years, freshmen were asked whether they “frequently”, “occasionally”, or “never” drink beer. In many years, the students were also how often they consumed liquor or wine.


15 Freshmen were asked if they drank beer, but were not polled about liquor or wine in the 1970s and 1980s. In 1990, when surveyed about alcohol consumption, students reported that 58.2% drank beer and 57.5% drank liquor or wine. The survey results are available by year at http://www.heri.ucla.edu/tfsPublications.php.


Some of the “heaviest drinking was back in the 1970s and ‘80s, when parents of today’s students would have been enrolled.”\textsuperscript{19} It is important to note that during most of that earlier time period, the legal drinking age in most states was eighteen; thus, many college students in the 1970s and 1980s were legally permitted to buy and consume alcohol. Eighteen became the age of majority in 1971 when the twenty-sixth amendment to the United States Constitution was adopted, granting eighteen-year-olds the right to vote.\textsuperscript{20} One court commented that with the change in the age of majority, “college students today are no longer minors” and they have “discrete rights not held by college students from decades past.”\textsuperscript{21} Students asserted their independence in the late 1960s and early 1970s in campus demonstrations which were described as “a direct attack by the students on rigid controls by the colleges” as well as “an all-pervasive affirmative demand for more student rights.”\textsuperscript{22} Through these demonstrations, students succeeded in attaining expanded rights to privacy in college life. Courts often point out that college students are independent adults, and thus, universities are not custodians of their students and do not owe them a duty of supervision.\textsuperscript{23}

Adult students “are capable of protecting their own self interests,”\textsuperscript{24} noted one court in holding that the university had no duty to protect them. “College administrators no longer control the broad arena of general morals . . . [as] students vigorously claim the right to define and regulate their own lives.”\textsuperscript{25} Another court held a university not liable for an alcohol-related


\textsuperscript{20} U.S. Const. am. XXVI.

\textsuperscript{21} Bradshaw v. Rawlings, 612 F.2d 135, 139 (3d Cir. 1979).

\textsuperscript{22} Bradshaw, 612 F.2d at 139.

\textsuperscript{23} See, e.g., Beach v. Univ. of Utah, 726 P.2d 413, 418-19 (Utah 1986).

\textsuperscript{24} Bradshaw, 612 F.2d at 140.

\textsuperscript{25} Bradshaw, 612 F.2d at 140.
accident and stated that a student should not be “viewed as fragile and in need of protection.”

“[S]ociety considers the modern college student an adult, not a child of tender years,” added the court.

A decade after eighteen-year-olds were guaranteed the right to vote, another significant (and seemingly incongruous) age-related legal change occurred: the drinking age was raised to twenty-one. On July 17, 1984, then-President Ronald Reagan signed the National Minimum Drinking Age Act, 23 U.S.C. § 158, which provides that a percentage of federal highway funds will be withheld from any state that allows persons younger than twenty-one to purchase alcohol lawfully. The United States Supreme Court upheld the constitutionality of the Act in 1987. By the end of that year, all fifty states had adopted legislation setting the legal drinking age at twenty-one.

Universities have had to change the ways in which they regulate alcohol consumption at campus parties in response to new laws. For example, the federal Drug Free Schools and Communities Act Amendments of 1989 requires an institution of higher education to report biennially on the effectiveness of its alcohol and drug programs as well as the consistency of its enforcement of the policy. Likewise, the Clery Act requires that universities develop policies to

26 Beach v. Univ. of Utah, 726 P.2d 413, 418 (Utah 1986).
27 Beach v. Univ. of Utah, 726 P.2d 413, 419 (Utah 1986) (quoting Bradshaw v. Rawlings, 612 F.2d 135, 139-40 (3d Cir.1979)).
30 South Dakota v. Dole, 483 U.S. 203, 211-12 (1987) (holding that the Act was a valid exercise of the federal spending power and did not violate the twenty-first amendment which gives states the power to impose restrictions on the sale of alcoholic beverages).
prevent crimes and report crime statistics to any employee, student, or applicant on an annual basis.\textsuperscript{34} In addition to reporting crime statistics, a university must also provide “a statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs.”\textsuperscript{35} To comply with these new regulations, universities have implemented comprehensive programs to address alcohol abuse on campus.\textsuperscript{36} Efforts include education on the effects of alcohol, sponsorship of alcohol-free events, notification of parents when their students are cited for alcohol-related infractions, and adjustment of the academic schedule to avoid long weekends by requiring more Friday classes.\textsuperscript{37}

Litigation over alcohol-related incidents on college campuses arises from various situations, including injuries that result from intoxicated students falling,\textsuperscript{38} injuries suffered during parties and hazing rituals involving alcohol,\textsuperscript{39} and injuries from other assaults that occur after alcohol has been consumed on campus.\textsuperscript{40} One expert in the field of education law summarizes the situation in this way: “[T]he battleground over competing visions of the modern university is the high-risk alcohol culture and its epidemic primary and secondary effects.”\textsuperscript{41} It is

\begin{footnotesize}
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\item[34] 20 U.S.C. § 1092(f)(2012).
\item[38] See, e.g., Beach v. Univ. of Utah, 726 P.2d 413 (Utah 1986).
\item[40] See, e.g., Crow v. California, 222 Cal. App. 3d 192 ( Ct. App. 1990).
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“[I]nitigation over injuries fueled by alcohol” that “drive[s] college and university safety law today.”

The victim of an alcohol-related assault or accident may attempt to establish liability on the college or university’s part by asserting a negligence claim. In the context of a negligence action against a college or university brought by the student-victim, the plaintiff will have to show that the university owed a duty of care to the victim, the university breached its duty, the victim suffered injury or damages, and the university’s breach caused the victim’s injuries or damages.

At the outset, this Article will set forth the relevant legal background by addressing the elements of a negligence claim that could be brought against the university when an alcohol-related incident has resulted in a student’s injuries. Part I is the Introduction. Part II addresses the elements of a negligence claim and breaks the various arguments into subparts. Much of this part of the Article is focused on the element of duty because courts have generally concluded that there is no duty in these cases, and thus the analysis of other elements is unnecessary and the negligence claims fail. The analysis in Part III provides a discussion of the tension between the expectations of “helicopter parents” with regard to the caretaker role of the university versus the well-established rule that universities have no custodial relationship with their adult students and have no legal duty to supervise or protect them from harm. This Article argues that it would be detrimental to return “full circle” to the notion that a university should act in loco parentis. The

reason is that a vital part of the higher education process involves the maturation of students into full, productive adulthood. Students must learn to take responsibility for themselves.

The Conclusion of the Article, Part IV, indicates that universities are not and should not be liable for the tragic injuries that result from rampant alcohol abuse in most instances. Moreover, the obligation to ensure that students do not abuse alcohol cannot be assigned solely to university administrators who have no legal duty to monitor the students’ private lives. Rather, shaping students’ values and influencing the choices that adult students make must also come from the students themselves—as well as parents and community leaders—through preventive programs, leadership, and peer-to-peer guidance.

II. ELEMENTS OF A NEGLIGENCE CLAIM AGAINST THE UNIVERSITY FOR ALCOHOL-RELATED INJURIES

A. Does a University Have a Legal Duty to Protect its Students From Alcohol-Related Harm?

One of the most difficult tasks for plaintiffs in a negligence action against the university is establishing that the school owed the plaintiff a duty of care. Plaintiffs may argue that a university should owe a duty to its students based on several theories: (a) a special relationship exists between the college and its students, so the school has a duty to supervise them; (b) it is foreseeable that harm may befall a student when alcohol is abused, and the college has a duty to prevent foreseeable injuries; (c) the university has the ability to control students’ behavior and has knowledge that harm may come from alcohol abuse, thus giving rise to a duty to prevent injuries; and (d) the university voluntarily assumes a duty when it enacts rules and regulations

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44 "‘[D]uty’ is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection.’ Thus, we may perceive duty simply as an obligation to which the law will give recognition in order to require one person to conform to a particular standard of conduct with respect to another person.” Bradshaw v. Rawlings, 612 F.2d 135, 138 (3d Cir. 1979) (quoting W. Prosser, Law of Torts 333 (3d ed. 1964)).
forbidding alcohol consumption on campus. Courts have addressed these arguments and have rejected them in the vast majority of cases.\textsuperscript{45}

For a third of a century, most courts have held that there is no duty on the part of a university to supervise or protect students: “[A]s a general rule, colleges and universities do not have a legal duty to supervise their students or to protect individuals from unforeseeable harm caused by their students.”\textsuperscript{46} To impose a “duty of care on a university to protect its students from the risks of harm flowing from the use of alcoholic beverages would be ‘unwarranted and impracticable,’” stated one court.\textsuperscript{47} Furthermore, “[t]he incursion upon a student’s privacy and freedom that would be necessary to enable a university to monitor students during virtually every moment of their day and night to guard against the risks of harm from the voluntary ingestion of drugs [or alcohol] is unacceptable and would not be tolerated.”\textsuperscript{48}

\textbf{1. Does the Connection Between a University and its Students Constitute a “Special Relationship” That Triggers a Duty in Tort Law?}

The mere fact that a student is enrolled at a university does not create a special relationship that imposes a duty of care on the institution.\textsuperscript{49} A special relationship only exists “when one assumes responsibility for another’s safety or deprives another of his or her normal

\textsuperscript{45} Out of 29 cases involving alcohol-related harm, in only 6 instances did the court conclude that the university owed a duty to the student. Of those, in 2 it was found that there was only a duty because the university had undertaken or assumed the duty. See Coghlan v. Beta Theta Pi Fraternity, 987 P.2d 300 (Idaho 1999); McClure v. Fairfield Univ., CV000159028, 2003 WL 21524786 (Conn. Super. Ct. June 19, 2003). Of the total 6, only in 1 was the university ultimately held liable for ordinary negligence, Flynn v. Fairfield Univ., CV040410558S, 2006 WL 2193246 (Conn. Super. Ct. July 18, 2006), and in 1 the university was found partially at fault, Zavala v. Regents of Univ. of Calif., 178 Cal. Rptr. 185 (Ct. App. 1981), and in 2 the universities breached the assumed duty, Coghlan v. Beta Theta Pi Fraternity, 987 P.2d 300 (Idaho 1999); McClure v. Fairfield Univ., CV000159028, 2003 WL 21524786 (Conn. Super. Ct. June 19, 2003).


\textsuperscript{49} Freeman v. Busch, 349 F.3d 582, 587 (8th Cir. 2003) (stating “the general rule is that no special relationship exists between a college and its own students because a college is not an insurer of the safety of its students”).
opportunities for self-protection.” 50 “The essence of a special relationship is dependence by one party upon the other or mutual dependence between the parties.” 51 College students are not dependent children who need babysitters. Rather, students are independent adults and are able to care for themselves. The oft-quoted case of Bradshaw v. Rawlings held that a university has no duty to supervise or protect its adult students. 52 That rule, announced in 1979, is still the predominant position of courts today with regard to the absence of a duty. “Our beginning point is a recognition that the modern American college is not an insurer of the safety of its students,” the Bradshaw court stated. 53 “Whatever may have been its responsibility in an earlier era, the authoritarian role of today's college administrations has been notably diluted in recent decades. . . .” 54 The court referenced an earlier, undefined period of history when there may have been a duty: 55

There was a time when college administrators and faculties assumed a role in loco parentis. Students were committed to their charge because the students were considered minors. A special relationship was created between college and student that imposed a duty on the college to exercise control over student conduct and, reciprocally, gave the students certain rights of protection by the college. . . . But today students vigorously claim the right to define and regulate their own lives. . . . 56

50 Beach v. Univ. of Utah, 726 P.2d 413, 415 (Utah 1986) (citing Restatement (Second) of Torts § 314 (A)(1964)).
51 Beach, 726 P.2d at 415-16 (citing Restatement (Second) of Torts § 314 (A), comment (b)(1964)); accord Univ. of Denver v. Whitlock, 744 P.2d 54, 58 (Colo. 1987) (listing the following special relationships: “common carrier/passenger, innkeeper/guest, possessor of land/invited entrant, employer/employee, parent/child, and hospital/patient”).
52 Bradshaw v. Rawlings, 612 F.2d 135, 141 (3d Cir. 1979).
53 Bradshaw, 612 F.2d at 138.
54 Bradshaw, 612 F.2d at 138.
55 Bradshaw, 612 F.2d at 140 (stating that “[a]t the risk of oversimplification, the change has occurred because society considers the modern college student an adult”).
56 Bradshaw v. Rawlings, 612 F.2d 139-40 (3d Cir. 1979).
In *Bradshaw*, the underage plaintiff suffered injuries in an automobile accident that occurred after the plaintiff had been drinking at a school-sponsored picnic.\(^{57}\) The *Bradshaw* court held that the plaintiff-student failed to establish that the college owed him a duty of custodial care.\(^{58}\)

In the three decades since that decision, courts have consistently echoed the same view. In 1986, a court addressed the plaintiff’s argument “that a large, modern university has a custodial relationship with its adult students and that this relationship imposes upon it the duty to prevent students from violating liquor control laws whenever those students are involved directly or indirectly in a University activity.”\(^{59}\) The court said it did not.\(^{60}\) That case involved a student who was injured on a school-sponsored field trip lead by a tenured professor. The student had attended a lamb roast where she consumed several home-brewed beers, a mixed drink, and whiskey.\(^{61}\) The professor testified that he had several beers and assumed most people were drinking at the roast.\(^{62}\) On her way back to the campsite the student got lost and was rendered quadriplegic after falling into a crevice.\(^{63}\) Although a professor was with the group, the court did not impose any custodial or supervisory duty on him or the university.\(^{64}\)

\(^{57}\) *Bradshaw*, 612 F.2d at 137.
\(^{58}\) *Bradshaw*, 612 F.2d at 143.
\(^{59}\) *Beach v. Univ. of Utah*, 726 P.2d 413, 417 (Utah 1986).
\(^{60}\) *Beach v. Univ. of Utah*, 726 P.2d 413, 417-18 (Utah 1986) (“Determining whether one party has an affirmative duty to protect another from the other's own acts or those of a third party requires a careful consideration of the consequences for the parties and society at large. If the duty is realistically incapable of performance, or if it is fundamentally at odds with the nature of the parties' relationship, we should be loath to term that relationship ‘special’ and to impose a resulting ‘duty’ . . .”).
\(^{61}\) *Beach*, 726 P.2d at 415.
\(^{62}\) *Beach*, 726 P.2d at 415.
\(^{63}\) *Beach*, 726 P.2d at 415.
\(^{64}\) One court criticized the logic in both *Beach* and *Bradshaw*, saying that although those courts declined to impose a duty on the university to supervise students who were “responsible adults,” the offenses involved drinking alcoholic beverages, which is an area where “the students were unquestionably not deemed adults under the law since most, if not all, participants were below the drinking age.” *Furek v. Univ. of Delaware*, 594 A.2d 506, 518 (Del. 1991). Since the students are not old enough to drink legally, it is illogical to say that they are “mature” with regard to making the choice and handling the effects of consuming alcohol, the court opined. *Furek*, 594 A.2d at 518. A similar observation was made by a California court: “College students are generally young adults who do not always have a mature understanding of their own limitations or the dangers posed by alcohol and violence.” *Tanja H. v. Regents of the University of California*, 228 Cal. App. 3d 434, 438, 278 Cal. Rptr. 918, 920 (Ct. App.
A year later, the Supreme Court of Colorado similarly concluded that a university had no special duty to protect a fraternity member from “the well-known dangers of using a trampoline” during a party on campus:

The demise of the doctrine of *in loco parentis*... has been a direct result of changes that have occurred in society’s perception of the most beneficial allocation of rights and responsibilities in the university-student relationship. By imposing a duty on the University in this case, the University would be encouraged to exercise more control over private student recreational choices, thereby effectively taking away much of the responsibility recently recognized in students for making their own decisions with respect to private entertainment and personal safety.

Declining to find a special relationship between the student (who became paralyzed after falling on the trampoline) and the University of Denver, the court said that to impose liability on the college “would directly contravene the competing social policy of fostering an educational environment of student autonomy and independence.”

Illustrating the consistency of the “no duty” rule over the decades, another court embraced the same logic in 1993, opining that “[t]he university-student relationship does not in and of itself impose a duty upon universities to protect students from the actions of fellow students or third parties.” In that case, a female student was sexually assaulted in a coed resident hall by a sexual predator who had a violent history at the university. The university had previously banned the student/perpetrator from coed resident halls, but had subsequently allowed him to live in a coed hall during summer school, where he attacked a female dormitory

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66 Univ. of Denver v. Whitlock, 744 P.2d 54, 60 (Colo. 1987) (“Such an allocation of responsibility would ‘produce a repressive and inhospitable environment, largely inconsistent with the objectives of a modern college education.’”) (quoting Beach v. Univ. of Utah, 726 P.2d 413, 419 (Utah 1986)).
The court rejected the victim’s claim that the university had a custodial duty to protect students in the residence hall. The court emphasized that “[t]he in loco parentis doctrine is outmoded and inconsistent with the reality of contemporary collegiate life.”

In yet another case, a female student sustained permanent injuries when she fell thirty feet from a third floor fire escape after becoming intoxicated. The student had been celebrating the end of “Rush Week” and had attended fraternity parties with names such as “Jack Daniels’ Birthday” or “Fifty Ways to Lose Your Liver.” Even though school employees were present at the Greek houses, the plaintiff was never asked for identification. The court held that the university had no legal duty to supervise its students even though college employees were actually on hand at the events. “[S]ociety no longer expects universities to monitor the drinking activities of eighteen-year-old college students,” stated the court. There was no duty, and thus, no liability for negligence.

Thirteen years later, another court went beyond merely indicating that there is no duty to monitor students. That court stated quite strongly that it would be unacceptable and intolerable for college administrators to intrude into students’ private lives in an effort to prevent them from using drugs or alcohol. That case involved a freshman student who overdosed on heroin. The student’s estate sued the university for negligence, alleging that the university failed to take adequate precautions to protect the student, but the court ruled against the plaintiffs because it was not the college’s duty to supervise the student’s private activities.

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72 Coghlan v. Beta Theta Pi Fraternity, 133 Idaho 388, 393 (Idaho 1999).
Even in recent years, the rule has remained the same. In 2012, when a student was injured at a party and sued the university, the court stated that there was “no special relationship resulting in the imposition of a duty,” particularly since the injured student “voluntarily, and uninvited, attended an off-campus party of which [the university] had no knowledge.” The court held “that defendants assumed no duty to protect plaintiff from drinking-related injuries at an off-campus party.”

In sum, any argument that a duty exists based on a custodial relationship between a college and its students is very likely to fail, as the courts have consistently rejected this viewpoint for more than thirty years.

2. If the Harm From Alcohol Abuse is Foreseeable, Does the College Have a Duty to Protect Students From It in the Absence of a Special Relationship?

The question is whether injury to a student that results from drinking is “foreseeable harm” that creates a legal duty on the part of the university. The answer is “no,” because foreseeability alone is not sufficient to trigger a legal duty to protect and supervise a student. “Foreseeability of injury does not determine the existence of duty.” A special relationship must exist before university has any duty to protect a student from foreseeable harm. The courts speak in terms of whether there is a duty to supervise adult students, that is, a duty to protect students from foreseeable harm that results from their own choices.

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76 Mynhardt v Elon Univ., 725 S.E.2d 632 (N.C. 2012) (finding no duty on the part of the university when a student became paralyzed after being pushed out of a fraternity party).
77 Id. at 637.
78 Id. at 637.
81 There is no duty to protect against unforeseeable harm, but some may argue that injuries from alcohol consumption are foreseeable.
82 Beach v. Univ. of Utah, 726 P.2d 413 (Utah 1986).
Because courts have consistently held that there is no special relationship between the college and the student, no duty exists and thus, courts do not dwell much on whether the harm from drinking was foreseeable. This point was recently reinforced by the Second Circuit: “Under New York law, colleges have no legal duty to shield students or their guests. . . . They do not act in loco parentis. This analysis does not change merely because a danger is foreseeable.”

In Bradshaw, for example, the injured student argued since the college knew that students would drink beer illegally at the class picnic and that harm could result, the knowledge of possible harm triggered a duty either to protect the students or to control their conduct. The court rejected that argument, indicating that since there was no special relationship between the school and the students, there was no duty to protect them. The court cleared up some confusion that exists in the body of case law in this area, stating that the victim’s argument blurred the distinction between duty and breach. The opinion implied that the school’s failure to exercise control might have been a breach if there had been a duty, but the failure to control or protect students from foreseeable harm did not, in and of itself, create any legal duty to do so.

Some scholars, however, may point to the landmark case of Tarasoff v. Regents of University of California as an example of a situation where the court held that the university’s therapist had a duty to warn a student of threats against her life. The harm in that case was foreseeable; the counselor learned during treatment that a patient intended to kill Tarasoff. It is important to emphasize that even in Tarasoff, the court found as a threshold matter that there was

83 See note 49, supra., and accompanying text. For example, in Baldwin, the court had stated that “students have demanded rights which have given them a new status and abrogated the role of in loco parentis of college administrators.” Baldwin v. Zoradi, 176 Cal. Rptr. 809, 816 (Ct. App. 1981).
84 It comes into play in the analysis of proximate cause if the elements of duty and breach are satisfied.
85 Guest v. Hansen, 603 F.3d 15, 21-22 (2d Cir. 2010)(emphasis added).
86 Bradshaw v. Rawlings, 612 F.2d 135, 141 (3d Cir. 1979).
87 Bradshaw, 612 F.2d at 141.
88 Bradshaw, 612 F.2d at 142.
89 Tarasoff v. Regents of Univ. of Ca., 551 P.2d 334, 344 (Cal. 1976).
a special relationship between the therapist and the patient. That special relationship triggered a duty to warn where harm was foreseeable.

In Baldwin v. Zoradi, a case involving an alcohol-related incident, another California court clarified the applicability of Tarasoff. In Baldwin, the plaintiff-student was injured as a result of a “speed contest” after the passengers and drivers had been drinking in the university dormitories. The Baldwin court distinguished Tarasoff, indicating that whereas in the Tarasoff case the “defendant stood in a special relationship to both the victim [Tarasoff] and the person whose conduct created the danger,” in Baldwin, by contrast, there was no special relationship, so the question of foreseeability of the injury was not determinative. Even if it were foreseeable that the intoxicated students might be injured, the university had no duty to monitor students’ alcohol consumption to protect them from injuries.

The general rule remains the same: “When the avoidance of foreseeable harm requires a defendant to control the conduct of another person, or to warn of such conduct, the common law as a general rule imposes liability only if the defendant bears some special relationship to the dangerous person or potential victim.” In the absence of a special relationship, the university has no duty to supervise or protect students even when harm is foreseeable.

3. Does a Duty Arise if the University Has Both Control Over the Students’ Social Activities and Knowledge of Potential Harm From Alcohol Use?

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90 Tarasoff v. Regents of Univ. of Ca., 551 P.2d 334, 344 (Cal. 1976).
Courts have generally held that a university has no duty to control students’ behavior—even if it can—because the students are independent adults. The analysis still begins with whether there is a special relationship that would trigger the duty. Even in instances where university officials knew about illicit alcohol use at parties, and even when school officials supervised the students’ social activities, there was no tort duty to protect the adult students from their own risky choices.

a. Knowledge and Control in the Context of a Party Where University Officials Are Aware of Drinking.

The Second Circuit held in 2010 that even if a university had the ability to control students’ social behavior, it was under no obligation to do so. In Guest v. Hansen, students were observed by a college administrator as they congregated to drink and socialize at the lake near school grounds. One student was killed in a snowmobile accident while returning to the campus in the wee hours of the morning. Even though the administrator knew the students had been drinking, the college was under no duty to take any action to protect them. The court stated, “assuming arguendo that the College had the ability to control off-campus social activities, it was under no obligation to do so.” Knowledge of the activity and the ability to control it did not give rise to a duty on the university’s part. The court noted that the accident occurred off-

95 See, e.g., Beach v. Univ. of Utah, 726 P.2d 413 (Utah 1986); Baldwin v. Zoradi, 176 Cal. Rptr. 809 (Ct. App. 1981).
96 In the Beach case, the court held that there was no special relationship between the University and plaintiff Beach or other adult students. “Our conclusion is not affected by the presence of any university rules that might have existed regarding the consumption of alcohol, over and above the state ban on underage drinking.” Beach v. Univ. of Utah, 726 P.2d 413, 419 (Utah 1986). The court further held that neither the student’s attendance nor agreement to behavioral policies made “the student less an autonomous adult or the [university] more a caretaker.” Beach v. Univ. of Utah, 726 P.2d 413, 419, footnote 5 (Utah 1986).
97 Coghlan v. Beta Theta Pi Fraternity, 133 Idaho 388, 393 (1999); see also Beach v. Univ. 726 P.2d 413 (Utah 1986).
98 Guest v. Hansen, 603 F.3d 15 (2d Cir. 2010).
99 Guest v. Hansen, 603 F.3d 15 (2d Cir. 2010).
100 Guest v. Hansen, 603 F.3d 15 (2d Cir. 2010).
campus, but expressly indicated that the conclusion would have been the same even if the
drinking had begun on the college’s premises.101

Similarly, a court held that there was no duty in Coghan v. Beta Theta Pi Fraternity,102
when an intoxicated freshman fell thirty feet from a fire escape after consuming alcoholic
beverages at two parties that were supervised by university personnel.103 The officials were
aware of the alcohol consumption and could have controlled the students’ drinking, but did not
do so.104 The young student was never asked for identification even though the event was
sponsored and sanctioned by the university.105 Although a university official knew that underage
students were drinking, the college had no duty to control the students’ social choices, held the
court.106

On the other hand, the contrary view is illustrated in a cheerleading case where the court
stated that because a university exerted significant control over students’ participation in the
school-sponsored cheerleading program, there was a special relationship between the school and
the cheerleaders.107 That special relationship created an expectation that the college would
protect its cheerleaders from unsafe activities.108 Although no alcohol consumption was involved
when the cheerleader was injured, the case represents narrow circumstances in which a court did
find a special relationship that gave rise to a duty on the part of the university to “exercise that

101 Guest v. Hansen, 603 F.3d 15, 22 (2d Cir. 2010).
106 The court “decline[d] to hold that Idaho Universities have the kind of special relationship creating a
duty to aid or protect adult students from the risks associated with the students’ own voluntary intoxication.” Id. at
400. This court also noted what other courts have stated; that a university is not an insurer of its students. There was
no duty imposed on the school since no special relationship existed between the plaintiff and the university. Id.
degree of care which a reasonable and prudent person would exercise under the same or similar circumstances.109

Cases involving sports injuries (such as the cheerleading case) or hazing110 occasionally result in the courts making a narrow exception to the “no duty” rule. In a hazing case, freshman Jeffrey Furek went through a fraternity’s pledge period and was permanently scarred after liquid oven cleaner was poured on his head while he was blindfolded.111 The University of Delaware argued that it assumed no responsibility to protect Furek, an adult student, from hazing. The Furek court found a duty based on Restatement § 323 because the university had assumed control over security on campus and had an obligation to protect students from the known dangers of hazing.112 That court discussed—but did not follow—the prevailing rule announced by “a number of courts” that “have rejected both a duty under the in loco parentis doctrine and a duty of supervision under Restatement § 314 A when one assumes responsibility for another’s safety or deprives another of a normal opportunity for self-protection.”113 The Furek court departed from the weight of authority114 by holding that “when there is direct university involvement in, and knowledge of, certain dangerous practices of its students, the university cannot abandon its residual duty of control.”115 The duty to protect Jeffrey Furek arose from the

114 Furek v. Univ. of Delaware, 594 A.2d 506, 519 (Del. 1991) (acknowledging that its decision was contrary to the prevailing view).
115 Furek v. Univ. of Delaware, 594 A.2d 506, 519 (Del. 1991).
university’s knowledge that hazing was occurring, as well as the university’s repeated communications regarding its policy against hazing and its commitment to provide security.\footnote{Furek v. Univ. of Delaware, 594 A.2d 506, 520 (Del. 1991) (stating that the school’s responsibility was based on the Restatement § 323 provision regarding “a duty owed by one who assumes responsibility for the safety of another”).}

\begin{itemize}
\item[b.] Knowledge and Control by the University Under a Landowner or Landlord Theory.
\end{itemize}

Under the theory of a landowner’s liability, a university may sometimes have a duty. A landowner who has knowledge of a danger and fails to control or correct an unsafe condition may be liable for resulting injury.\footnote{Guest v. Hansen, 603 F.2d 15, 22 (2d Cir. 2010); cf. Lloyd v. Alpha Phi Alpha Fraternity, 96-CV-348, 1999 WL 47153 (N.D.N.Y. Jan. 26, 1999) ("A landowner cannot be held liable for injuries sustained by a party engaged in a voluntary activity unless the landowner had knowledge of the activities and exercised a degree of supervision or control") (quoting Oja v. Grand Chapter of Theta Chi Fraternity, 680 N.Y.S2d 277, 278 (N.Y. 3d Dept. 1998)).} Therefore, treating the university as a landowner instead of a custodial caretaker of its students may yield a different conclusion as to duty. The landowner liability theory, however, is a “narrow” approach and “does not appear to apply to activities that are dangerous independent of the landowner’s actions.”\footnote{Guest v. Hansen, 603 F.2d 15, 22 (2d Cir. 2010).}

For example, a physically aggressive roommate was not deemed to be “a dangerous or defective condition” so as to trigger the landlord’s duty to rectify the situation, held one court.\footnote{Rhaney v. Univ. of Maryland, E. Shore, 880 A.2d 357, 365 (Md. Ct. App. 2005). Note that the Raney case apparently did not involve alcohol-related injuries; rather, a student was assaulted in the dormitory by a roommate with a history of violent tendencies.} Indicating that the landlord is not an insurer against criminal acts, one court clarified that “dangerous conditions” are physical defects such as poor lighting or defective security bars on doors in the building; the students who occupy the dormitory rooms are not “defective conditions.”\footnote{Rhaney, 880 A.2d at 365.} Thus, the university as a landlord has no duty to control the actions of a third party.\footnote{Rhaney, 880 A.2d at 365–66.}

\footnote{Guest v. Hansen, 603 F.2d 15, 22 (2d Cir. 2010).}

\footnote{Rhaney v. Univ. of Maryland, E. Shore, 880 A.2d 357, 365 (Md. Ct. App. 2005). Note that the Raney case apparently did not involve alcohol-related injuries; rather, a student was assaulted in the dormitory by a roommate with a history of violent tendencies.}

\footnote{Rhaney, 880 A.2d at 365.}

\footnote{Rhaney, 880 A.2d at 365–66.}
Similarly, a California court opined that if students were drinking to excess in the
dormitory, their conduct did not equate to a “dangerous condition” for which the
university/landlord was responsible.\textsuperscript{122} A dangerous condition on the land typically refers to
“some physical feature of the property” or some “physical defect.”\textsuperscript{123} Although the court
acknowledged prior cases where a vicious dog and the firing of guns on rental property had
resulted in the liability of landowners for invitees’ injuries, a dormitory party filled with
intoxicated students simply was not legally analogous to other dangerous conditions.\textsuperscript{124} Thus,
there was no basis for holding the Trustees of the California Polytechnic State University liable
as a landlord despite the occurrence of a subsequent tragic accident.

The same result was reached in \textit{Crow v. State of California}, where the court indicated
that a dangerous person in a dormitory was not the same as a “dangerous condition” because
there was no physical defect that the university should have repaired.\textsuperscript{125} In \textit{Crow}, a student
attended a keg party in a dormitory and was assaulted by another student. The injured student’s
claim, predicated on a California statute prohibiting the maintenance of property in a dangerous
condition, failed.\textsuperscript{126}

Analogizing a university to an innkeeper who controls guests’ lodging, another court held
that a university had no duty to protect its students from the actions of intoxicated third
parties.\textsuperscript{127} In that case, a student named Tanja H. drank alcohol at a party and was subsequently

\textsuperscript{127} Tanja H. v. Regents of the Univ. of California, 278 Cal. Rptr. 918, 921 (Ct. App. 1991) (utilizing the
innkeeper approach as just one of a handful of theories to analyze the existence of a duty on the part of the
university).
raped in the dormitory by some of her fellow students.\textsuperscript{128} The harm resulted from the students’ actions—both those of Tanja and of her male companions—and not from any dormitory conditions that the school could have controlled, said the court.\textsuperscript{129} The court compared the university to an innkeeper “who does not have a duty to search guests for contraband, separate them from each other, or monitor their private social activities.”\textsuperscript{130} “[T]he university does not undertake a duty of care to safeguard its students from the risks of harm flowing from the use of alcoholic beverages.”\textsuperscript{131} Emphasizing that the university had no special relationship with its students, the court held that “absent a special relationship, a person who has not created a peril may not be held liable for failure to protect against it.”\textsuperscript{132} The court nonetheless reflected some sensitivity toward the rape victim, but stopped short of holding the university responsible: “College administrators have a moral duty to help educate students [about sexually degrading conduct or violence], but they do not have a legal duty to respond in damages for student crimes.”\textsuperscript{133}

Finally, in deciding whether there was a landlord-tenant relationship between the University of Denver and a fraternity, a Colorado court noted that the fraternity paid an annual rent of one dollar, and the university as landlord had the right to inspect the building.\textsuperscript{134} The fraternity agreed that occupants would abide by the university’s rules and regulations. However, since the university had not regulated trampoline use, the court found that there was no violation

\begin{footnotesize}
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\item[\textsuperscript{128}] Tanja H. v. Regents of the Univ. of California, 278 Cal. Rptr. 918, 921 (Cal. Ct. App. 1991).
\item[\textsuperscript{129}] Tanja H. v. Regents of the Univ. of California, 278 Cal. Rptr. 918, 921 (Cal. Ct. App. 1991) (stating that a shattered light bulb in the stairwell did not trigger liability for the sexual assault in the dark stairwell because the attack was not causally connected to the darkness; rather, the assault “began in one dormitory room, continued on the landing, and continued in tow other rooms.”)
\item[\textsuperscript{130}] Tanja H. v. Regents of the Univ. of California, 278 Cal. Rptr. 918, 921 (Cal. Ct. App. 1991).
\item[\textsuperscript{131}] Tanja H. v. Regents of the Univ. of California, 278 Cal. Rptr. 918, 921 (Cal. Ct. App. 1991) (quoting Crow v. California, 271 Cal. Rptr. 349, 359 (Ct. App. 1990)).
\item[\textsuperscript{132}] Tanja H. v. Regents of the Univ. of California, 278 Cal. Rptr. 918, 925 (Cal. Ct. App. 1991).
\item[\textsuperscript{133}] Tanja H. v. Regents of the Univ. of California, 278 Cal. Rptr. 918, 921 (Cal. Ct. App. 1991).
\item[\textsuperscript{134}] Univ. of Denver v. Whitlock, 744 P.2d 54, 61–62 (Colo. 1987).
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when a fraternity member fell while jumping on a trampoline during a party.\textsuperscript{135} In addition, the university/landowner’s “reservation of rights to inspect the premises and make repairs is generally not sufficient control to give rise to liability.”\textsuperscript{136} Therefore, the college owed no duty in its role as landlord to the injured fraternity member.

An exception to the general rule is found in a hazing case where the claim was brought in part on a landowner-invitee theory. The \textit{Furek} case, previously discussed, represents an exception to the predominant rule that universities do not owe their students a duty of supervision or protection.\textsuperscript{137} In that case,\textsuperscript{138} the university had leased land to a fraternity, and the fraternity had constructed its house and permitted its members to live there.\textsuperscript{139} The court again deviated from the majority rule when applying the landowner analysis to the situation. The University of Delaware had knowledge of and control over the situation, and it owed a duty as the landowner when a student was injured by fraternity brothers in a hazing incident, held the court.\textsuperscript{140} Despite the freedom enjoyed by university students, the university’s status as a landowner created some duty “to regulate and supervise foreseeable dangerous activities occurring on its property.”\textsuperscript{141}

These cases show that in most instances, courts have not imposed a duty on the university even when university officials were present and/or when the injury implicates the school’s role as landlord or landowner. In summary, a university owes no duty of protection or supervision to

\textsuperscript{135} Univ. of Denver v. Whitlock, 744 P.2d 54, 61–62 (Colo. 1987).
\textsuperscript{136} Univ. of Denver v. Whitlock, 744 P.2d 54, 61–62 (Colo. 1987).
\textsuperscript{138} Furek v. Univ. of Delaware, 594 A.2d 506 (Del. 1991).
\textsuperscript{139} Furek v. Univ. of Delaware, 594 A.2d 506, 520 (Del. 1991).
\textsuperscript{140} Furek v. Univ. of Delaware, 594 A.2d 506 (Del. 1991).
\textsuperscript{141} Furek v. Univ. of Delaware, 594 A.2d 506, 522 (Del. 1991).
its students even if the university has knowledge of and control over circumstances that can lead to alcohol-related injuries.

4. Does a College Voluntarily Assume the Duty to Supervise Students’ Social Activities When the School Regulates Alcohol Use on Campus?

Colleges have rules and procedures for addressing alcohol consumption; such policies are mandated by federal law. Courts have held, however, that such rules and handbook provisions do not create a legal duty for purposes of tort liability. Injured victims have argued that the enactment of campus conduct and safety regulations amounts to the voluntary undertaking of the duty by a university to supervise or protect its students. Under that reasoning, even if there is generally no duty in tort law to safeguard adult students, once the college undertakes the task of regulating students’ conduct, then the university is voluntarily assuming a duty. That argument fails in almost every case.

For example, in Bradshaw, the court held that even though the university had a policy banning underage students from consuming alcohol, that policy did not impose a special relationship that would lead to a duty on the part of the university. Since the policy “merely” reflected state law, it did not indicate that the university had voluntarily assumed a custodial relationship with its students.

That view was echoed in Booker v. Lehigh University, where the plaintiff argued that the university’s publication, “A Guide to the Social Policy,” established a duty to enforce its

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142 See note 34, supra., and accompanying text.
144 See, e.g., Beach v. Univ. of Utah, 726 P.2d 413, 420 (Utah 1986) (stating that a university’s code of conduct permits disciplining students for violations, but does not change the student/university relationship).
145 Bradshaw, 612 F.2d at 141.
146 Id.
provisions. Through its “Social Policy,” Lehigh controlled and policed parties and, therefore, the university had a duty to ensure compliance by students and guests, the injured student claimed. The court rejected that claim, characterizing it as an effort to cast the university in a parental role by arguing that “Lehigh is responsible for the actions of its (underage) students in loco parentis.” Holding that Lehigh had no such custodial duty, the court stated that “[t]o require Lehigh to supervise its thousands of students would render null and void the freedoms won by adult students. . . .” Moreover, the “Social Policy” itself did not create a duty to prevent underage students from drinking alcohol; it was merely “a policy by which Lehigh hoped all members of its community would abide,” and the university properly assumed “that the adult students were responsible enough to make their own decisions.” Declining to hold the university liable, the court described the plaintiff as one who “as a result of her own self-indulgent behavior . . . [became] inebriated at on-campus fraternity parties and thereafter injure[d] herself in a fall.”

Similarly, in a case where a freshman became intoxicated at a fraternity party and was subsequently killed in a head-on motorcycle accident, the court held that even though the college had an alcohol policy, there was no “special duty” to “control the actions of those students who are determined to acquire intoxicating beverages, even though they are underage.” The existence of a policy does not give rise to any legal duty to ensure that students comply with it;

students themselves are responsible for acting responsibly.\footnote{154}{Millard v. Thiel College, 611 A.2d 715, 717 (Pa. Super. Ct. 1992). Accord Univ. of Denver v. Whitlock, 744 P.2d 54, 60 (Colo. 1987) ("Nothing in the University's student handbook, which contains certain regulations concerning student conduct, reflects an effort by the University to control the risk-taking decisions of its students in their private recreation.").}

Likewise, in holding that Colgate University was not liable for student Jason Rothbard’s injuries in an alcohol-related incident, the court concluded that the publication of rules in a handbook did not give rise to any duty to police the students’ compliance with the rules.\footnote{155}{Rothbard v. Colgate Univ., 652 N.Y.S.2d 146 (N.Y. App. Div. 1997).} “We reject plaintiffs’ contention that in [publishing a handbook] the university voluntarily assumed the duty to take affirmative steps to supervise plaintiff and prevent him from engaging in the prohibited activity. At the time of his injury, plaintiff was not a young child in need of constant and close supervision; he was an adult, responsible for his own conduct.”\footnote{156}{Rothbard v. Colgate Univ., 652 N.Y.S.2d 146, 148 (N.Y. App. Div.1997).} In fact, the court intimated that the handbook’s provisions showed that the university was making some positive effort to control drinking on campus.\footnote{157}{Rothbard v. Colgate Univ., 652 N.Y.S.2d 146, 148 (N.Y. App. Div.1997).}

Even though underage drinking violates state law as well as violating a university’s handbook provisions, most courts still find that the university has no tort duty to monitor compliance. For example, the court in \textit{Baldwin v. Zoradi} stated, “Although the consumption of alcoholic beverages by persons under 21 years of age is proscribed by law, the use of alcohol by college students is not so unusual or heinous by contemporary standards as to require special efforts by college administrators to stamp it out.”\footnote{158}{Baldwin v. Zoradi, 176 Cal. Rptr. 809, 817 (Ct. App. 1981).} The court continued, “[a]lthough the university reserved to itself the right to take disciplinary action for drinking on campus, this merely follows state law. . . . We do not believe they created a mandatory duty.”\footnote{159}{Baldwin v. Zoradi, 176 Cal. Rptr. 809, 817 (Ct. App. 1981).} It is interesting to note that in Baldwin, the court squarely rejected the plaintiff’s attempt to compare the role of the university to that of a bartender who is liable
A hazing case further illustrates the point that even if a school publishes regulations on alcohol use, the school is not thereby undertaking a duty to protect students from violations of the rules: “Although the University published materials about the dangers of hazing and its prohibition on campus, and at times offered a seminar to help fraternities improve their pledge education programs, this involvement does not rise to the level of encouraging and monitoring pledge participation.”\(^\text{160}\)

Similarly, in a non-hazing case where a nineteen-year-old fraternity member voluntarily consumed significant quantities of liquor and beer, neither the fraternity itself nor the individual members were held liable for his death.\(^\text{161}\) It was undisputed that the fraternity neglected to enforce its alcohol policies, nor did it abide by “university regulations or state law.”\(^\text{162}\) After a “Big Brother/Little Brother” ceremony, Matt Garofalo became intoxicated at the fraternity house. Sometime during the night, he choked on his own vomit and was found dead by fraternity brothers the next morning.\(^\text{163}\) The drinking was not part of a ritual, nor was participation forced or compelled,\(^\text{164}\) and therefore the court distinguished this situation from

under the dram shop statute. \textit{Id.} at 817-18 (stating that “there is an obvious distinction between ‘giving’ or ‘furnishing’ alcoholic beverages and the failure to stop a drinking party”). \textit{Accord} Allen v. Rutgers, 523 A.2d 262, 266 (N.J. Super. Ct. 1987) (“Rutgers neither sells nor serves any alcoholic beverages consumed by violators, nor is it under any common law or statutory duty to protect patrons against the results of their voluntary intoxication.”).

\(^\text{160}\) Lloyd v. Alpha Phi Alpha Fraternity, 96-CV-348, 1999 WL 47153 (N.D.N.Y. Jan. 26, 1999) (quoting Rothbard, 652 N.Y.S.2d at 148 (“[T]he university expressly provided in its student handbook that certain conduct by its students was prohibited. We reject plaintiff’s contention that in so doing the university voluntarily assumed the duty to take affirmative steps to supervise plaintiff.”); \textit{contra} Furek v. Univ. of Delaware, 594 A.2d 506, 526 (Del. 1991). In \textit{Furek}, the court indicated that the university’s policy against hazing “constituted an assumed duty which ‘became an indispensable bundle of services which colleges . . . afford their students.’” \textit{Furek}, 594 A.2d at 526 (quoting Mullins v. Pine Manor College, 449 N.E. 2d at 336). The court modulated its pronouncement by adding, “[b]ecause of the extensive freedom enjoyed by the modern university student, the duty of the university to regulate and supervise should be limited to those instances where it exercises control.” \textit{Furek}, 594 A.2d at 522.

\(^\text{161}\) Garofalo v. Lambda Chi Alpha Fraternity, 616 N.W.2d 647, 656 (Iowa 2000).
\(^\text{162}\) Garofalo v. Lambda Chi Alpha Fraternity, 616 N.W.2d 647, 654 (Iowa 2000).
\(^\text{163}\) Garofalo v. Lambda Chi Alpha Fraternity, 616 N.W.2d 647, 656 (Iowa 2000).
\(^\text{164}\) Garofalo v. Lambda Chi Alpha Fraternity, 616 N.W.2d 647, 654 (Iowa 2000).
hazing cases where pledges were obligated to drink.\footnote{Garofalo v. Lambda Chi Alpha Fraternity, 616 N.W.2d 647, 653 (Iowa 2000).} Citing other alcohol-related cases brought against universities, the court aligned itself with the majority rule: “[T]he adoption of institutional policies prohibiting underage drinking do[es] not establish custodial relationships between the institution and its students so as to impose a duty of protection on the part of the institution.”\footnote{Garofalo v. Lambda Chi Alpha Fraternity, 616 N.W.2d 647, 654 (Iowa 2000).} Further, the court emphasized that it was “unaware of any legal authority which would elevate the fraternity’s failure to enforce its ‘Policy on Alcoholic Beverages’ to an actionable civil tort.”\footnote{Garofalo v. Lambda Chi Alpha Fraternity, 616 N.W.2d 647, 654 (Iowa 2000).}

A school may discipline a student for infractions if rules are not properly followed. Universities impose rules of conduct and aspire to maintain safe campuses.\footnote{The enactment of rules might set a higher standard than that which is required by the reasonableness standard. Thus, a university must act reasonably under the circumstances, but enforcement of the rules could involve a higher degree of care, that is, one that is much loftier than the minimum standard required under the law. One has no duty to attain the most elevated level of care. Beach v. University of Utah, 726 P. 2d 413, 419 n.5 (Utah 1986).} Tort liability will not attach, however, because the school has not actually assumed a custodial role over an adult student. As the court in \textit{Beach} stated, “[n]either attendance at college nor agreement to submit to certain behavior standards makes the student less an autonomous adult or the institution more a caretaker.”\footnote{Beach v. University of Utah, 726 P. 2d 413, 419 n.5 (Utah 1986).} In sum, a university is not deemed to have voluntarily assumed a duty to supervise its students by virtue of its enactment of policies that regulate students’ alcohol use.

\textbf{5. Conclusion as to the Element of Duty}

For multiple decades and with great consistency, courts have held that universities do not have a duty to protect their students except in very limited circumstances. Those circumstances are indeed so limited that they almost never exist. In case after case, as discussed above, courts...
have reiterated that college students are independent adults and colleges are not their caretakers, so unless there is some other special relationship (which is almost never found in cases involving alcohol-related injuries), the college simply has no duty to supervise the private lives of its students. As one court stated, requiring the school “to babysit each student . . . would be inconsistent with the nature of the relationship between the student and the institution, for it would produce a repressive and inhospitable environment, largely inconsistent with the objectives of a modern college education.”

B. Proving the Element of Breach of Duty

If the court finds that a duty exists, the next step in the analysis is to decide whether that duty has been breached by the defendant. Generally, a breach is defined as a failure by the party who owes a duty “to exercise reasonable care in protecting those at risk.” In a hazing case, the court held that Louisiana Tech University owed a duty to protect students from “a hazing tradition that has too often led to tragedy,” and also concluded that the university breached that duty. Examining whether the university had exercised reasonable care, the court placed weight on the facts that Louisiana Tech had failed to investigate prior reports of hazing adequately, had failed to follow its own procedures, and had failed to report complaints to the

170 To the extent that a duty has been found, it is in cases involving criminal acts by third parties such as rapes, shootings, and violent hazing. The societal interest in curbing such heinous acts may be shaping the courts’ view of duty in those instances.
171 Beach v. University of Utah, 726 P.2d 413, 419 (Utah 1986).
173 Morrison v. Kappa Alpha Psi Fraternity, 738 So. 2d 1105,1115  (La. Ct. App. 1999)(acknowledging that college students are independent adults, but concluding as “a matter of policy” that hazing involves exceptional circumstances where youthful students are vulnerable and in need of protection).
175 Morrison v. Kappa Alpha Psi Fraternity, 738 So. 2d 1105,1116  (La. Ct. App. 1999)(“[B]reach of duty is a question of fact, or a mixed question of law and fact, and the reviewing court must accord great deference to the facts found and the inferences drawn by the jury.”).
national fraternity. 176 Although there are similar cases where courts have declined to find a duty at all, 177 this one represents an exception and illustrates circumstances where the school breached its duty of care.

In another example—a cheerleading case where the University of North Carolina was found to have a duty to protect the cheer team from unsafe activities— 178 the court briefly addressed whether UNC had breached that duty. 179 The court sent the case back to the Commission for finding as to breach. The circumstances that were to be considered when determining whether the university breached its duty included the injured cheerleader’s age and skill level as compared to the other cheerleaders and also whether the supervision by the university was “reasonable and commensurate with the [students’] age and the attendant circumstances.” 180

In most reported college cases involving alcohol-related injuries, the element of breach is not discussed in detail because the analysis ceases when there is no duty.

C. What Must Be Shown to Prove Causation in an Alcohol-Related Injury Suit By a Student Against a University?

If a court finds (1) that a university had a duty to protect its students from alcohol-related injuries and (2) that the university breached that duty, the court must next determine whether the

177 See, e.g., Univ. of Denver v. Whitlock, 744 P.2d 54, 62 (Colo. 1987); Garofalo v. Lambda Chi Alpha Fraternity, 616 N.W.2d 647, 653 (Iowa 2000).
178 See note 109, supra., and accompanying text.
university’s acts or omissions caused the plaintiff’s injury.\textsuperscript{181} There are two types of causation, cause-in-fact and proximate (or legal) cause.\textsuperscript{182}

1. \textit{Cause-in-Fact}

The test for whether the university’s actions were the cause-in-fact of the student’s injuries is a factual inquiry described as a “but for” analysis. The court asks whether the harm would have occurred “but for” the school’s acts or omissions. “If the plaintiff would not have sustained the injuries but for the defendant’s substandard conduct, then such conduct is a cause in fact of the plaintiff’s harm.”\textsuperscript{183}

When multiple factors have contributed to the injury, the court examines whether the university’s conduct was “a substantial factor” in leading to the harm.\textsuperscript{184} For example, in the \textit{Morrison} hazing case, Louisiana Tech officials knew that a fraternity was hazing pledges (in violation of state law) but failed to “follow its own procedures for investigating or remedying” the situation.\textsuperscript{185} The court implied that “but for” the college’s failure to act, hazing would have been prevented and the injured student would not have been harmed. Since other parties were more directly involved, such as the fraternity president who physically beat Morrison, the court looked at whether Louisiana Tech’s actions were a substantial factor in the injury. The conclusion was that the jury did not err in finding that “the university’s failure was a precipitating or contributing factor which made it possible for [Morrison] to be physically hazed by the president.”\textsuperscript{186} Therefore, the element of cause-in-fact was met.

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2. Proximate Cause

Proximate cause exists where the injuries suffered by the plaintiff are a foreseeable consequence of the defendant’s negligent actions.\(^{187}\) However, foreseeability when discussing proximate cause is conceptually different than foreseeability in relation to whether the defendant owed a duty. When analyzing foreseeability as it relates to duty, legal discussion is limited to “whether the defendant’s conduct foreseeably created a broader ‘zone of risk’ that poses a general threat of harm to others.”\(^{188}\) Yet, foreseeability in a proximate cause analysis questions whether “the defendant’s conduct foreseeably and substantially caused the specific injury that actually occurred” within the “narrow, specific factual details of the case.”\(^{189}\)

In a case involving a University of North Carolina law student who went on a shooting rampage (and who subsequently sued the university’s psychologist),\(^{190}\) the court defined proximate cause as “a cause which in natural and continuous sequence, unbroken by any new and independent cause, produced the plaintiff’s injuries, and without which the injuries would not have occurred.”\(^{191}\) To prove foreseeability, which is an aspect of proximate cause, “a plaintiff is required to prove that ‘in the exercise of reasonable care, the defendant might have foreseen that some injury would result from his act or omission.’”\(^{192}\) The court found that the mental health therapist’s actions were not the proximate cause of the law student’s shooting spree or his resulting bullet wounds, stating that “in addition to being unforeseeable, plaintiff’s injuries were too remote in time, and the chain of events which lead to plaintiff’s injuries was too

\(^{187}\) This traditional explanation of proximate cause was originally stated in Palsgraf v. Long Island R. Co., 162 N.E. 99, 100 (N.Y. 1928).

\(^{188}\) McCain v. Florida Power Corp., 593 So. 2d 500, 502 (Fla. 1992).

\(^{189}\) McCain v. Florida Power Corp., 593 So. 2d 500, 502–03 (Fla. 1992).

\(^{190}\) In the case of Williamson v. Liptzin, 539 S.E.2d 313, 315, 316 (N.C. Ct. App. 2005), the student-shooter sued the school’s therapist for not preventing him from engaging in violent acts and for negligently causing the shooter himself to be shot in the legs by police.


Emphasizing that a person should not be “held liable to infinity for all the consequences which flow from his act,” the court stated that if the connection between the act and the injury appears “unnatural, unreasonable and improbable in the light of common experience,” there is no proximate cause. Liability does not flow indefinitely; liability only follows where the injuries suffered are the natural result of the negligent act. Although that case did not involve intoxication, the opinion is useful for its description of proximate cause in a recent suit against a university.

In *Allen v. Rutgers*, a jury found that proximate cause did not exist when an inebriated college student vaulted a stadium wall and was seriously injured during a football game. Rutgers University had rules in place that prohibited the consumption of alcohol during football games. At trial, the jury found that the plaintiff’s voluntary act of consuming a mixture of fruit punch and one-hundred and eighty proof grain alcohol severed the causal chain and relieved the university from liability. On appeal, the court affirmed the jury’s reasoning, stating that while Rutgers’s enactment of a rule prohibiting alcohol may protect “patrons against their own folly,” Rutgers is not necessarily liable for injuries that resulted from a student’s violation of the rule.

Further, *Allen* demonstrates that the existence of a rule or regulation does not necessarily lead to proximate cause in alcohol related negligence cases because the plaintiff’s own actions may sever liability. In *Allen*, the plaintiff’s own negligence in his decision to drink to excess was used to sever Rutgers’s liability. The plaintiff contended that the jury had been “so offended by

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197 Id. at 264.
198 Id. at 264.
199 Id. at 266.
[his] intoxication that they adopted whatever means necessary to insure he would not recover."²⁰⁰ The court found, however, that the jury had been properly instructed, and that it was within the jury’s province to find that “the negligence attributable to Rutgers was not so closely and significantly connected with Allen’s improvident leap over the wall as to render it the proximate cause of his consequent injuries.”²⁰¹ Moreover, it was apparent that the jury was unpersuaded that Rutgers’s lack of security at the football caused Allen to behave recklessly while inebriated. The court stated that “fairness and common sense precluded a causal relationship.”²⁰² Therefore, the negligent actions of the plaintiff severed the causal chain that would have rendered Rutgers liable.

Further, proximate cause may be extinguished when there is a superseding, intervening cause by a third party that was not foreseeable to the defendant.²⁰³ The independent actions of third parties can break the chain of causation, as illustrated in Freeman v. Busch, where a guest of a Simpson College student was injured and raped after she consumed a large amount of vodka and rum at an unauthorized party in a dormitory.²⁰⁴ The male student who had invited her to the party reported to the Resident Assistant that the young woman was intoxicated and unconscious on his bed. Neither called for medical help and neither provided any other assistance to her. Instead, her host returned to his room, raped her, and invited his two of his other friends to fondle her breasts.²⁰⁵ The young woman sued the male students (including the Resident Assistant who declined to call for assistance) and Simpson College. The court held that there was

²⁰² Allen, at 266 and 196–97.

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no special relationship between the young female guest and the college, so there was no duty. The court ruled against the victim, stating that “injury due to alcohol poisoning may have been reasonably foreseeable, but shoulder damage, rape, and sexual assault [were] not.” Additionally, the “independent actions” of the other male students were “superseding causes” that broke the chain of causation and relieved Simpson College of liability.

The existence of programs to curb the use of alcohol does not provide proof of foreseeability for purposes of showing proximate cause. A plaintiff may try to argue that universities foresee alcohol-related injuries, as evidenced by their anti-alcohol rules and handbook provisions. However, just as the adoption of alcohol policies does not mean that the university has assumed a legal duty to supervise students, neither does the implementation of rules mean that the injuries were “foreseeable” for purposes of proving proximate cause. In Baldwin v. Zoradi, for example, a student brought a cause of action against the California Polytechnic State University when she was rendered a quadriplegic from a car accident that resulted from a combination of heavy drinking and drag racing. While the court in Baldwin

207 Freeman v. Busch, 150 F. Supp. 2d 995, 1003 (S.D. Iowa 2001) (stating with regard to proximate cause that “foreseeable intervening forces are within the scope of the original risk, and therefore do not relieve the defendant from liability”).
209 See note 143, supra., and accompanying text.
primarily limited its discussion to the existence of a duty,\textsuperscript{212} the court briefly discussed whether the existence of a rule prohibiting alcohol consumption necessarily rendered all alcohol related injuries foreseeable. California Polytechnic State University had enacted rules limiting the consumption of alcohol in the dormitories via a license agreement.\textsuperscript{213} The plaintiff argued that the university’s failure to enforce its regulations against on-campus drinking made it foreseeable that the plaintiff would be injured.\textsuperscript{214} Rejecting that claim, the court reasoned, however, that “foreseeability does not turn on whether the particular [defendant] as an individual would have in actuality foreseen the exact accident and loss.”\textsuperscript{215}

It is foreseeable that a student could get hurt in an alcohol related incident, and such foreseeability is reflected in formulation of protective rules and regulations prohibiting the consumption of alcohol. Nonetheless, it does not follow that there is a causal connection—for tort purposes—between the university’s awareness of drinking on campus and the student’s injury.

In sum, the mere fact that a university has published rules and regulations or educational materials is not enough to satisfy the foreseeability requirement of proximate cause. Alcohol-related incidents are too attenuated from the university’s negligence, and in most cases, the inebriated actor serves as a sufficient supervening, intervening cause.

\textbf{D. SPECIAL CONSIDERATIONS THAT LIMIT DAMAGES}

\textit{1. Apportionment of Fault and Damages: Contributory or Comparative Negligence.}

\textsuperscript{212} See note 159, supra., and accompanying text.
\textsuperscript{214} \textit{Id.} at 815.
\textsuperscript{215} \textit{Id.} at 816.
Like superseding, intervening causes by third parties, comparative fault or contributory negligence affects the determination of whether a university will be liable for damages for a plaintiff’s injury. This analysis is often included in a discussion of causation: whose negligence caused the injury and to what extent? Historically at common law, the conduct of the alcohol consumer was the sole proximate cause of his own injuries, and suing a university for related injuries was barred by the doctrine of contributory negligence. In many states today, however, courts apply the doctrine of comparative negligence and apportion the fault among the parties.

One example is found in *Zavala v. Regents of University of California*.

The appellate court reinstated a jury verdict that apportioned the liability between the plaintiff and university, the plaintiff eighty percent at fault and the university twenty percent at fault. In that case, the plaintiff, a non-student, was injured when he fell from a fourth floor balcony after drinking heavily at a resident assistant-sponsored party at a university dormitory. The court found that although the plaintiff’s excess consumption of alcohol and marijuana use amounted to wilful misconduct, the university was partially liable for over-serving the plaintiff.

In another case, a student drank large quantities of grain alcohol at a university stadium. He then vaulted a stadium wall and fell thirty feet to the concrete steps below. Earlier, the student had stumbled drunkenly into security officers and was observed to be extremely intoxicated. The student sued Rutgers. At trial, the student argued that his own

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negligence was not at issue because “he was a member of the class protected by the policies and practices of the university against the use of alcoholic beverages at the stadium.”\textsuperscript{224} However, the jury found that any negligence on the part of Rutgers was not the proximate cause of the student’s injuries. “The circumstances of this case did not require a deviation from the general rule that voluntary drunkenness ordinarily constitutes contributory negligence.”\textsuperscript{225} Therefore, the student’s own actions were the cause of his injuries and the university was not liable.

\textbf{2. Amount of Damages}

The amount of general damages will vary significantly from case to case.\textsuperscript{226} In the case involving the student who was rendered a quadriplegic after a trampoline accident during a fraternity party, the jury awarded him over $7 million.\textsuperscript{227} After the jury attributed twenty-eight percent fault to the plaintiff, the award was limited to $5 million.\textsuperscript{228} However, the defendant-university filed a motion for judgment notwithstanding the verdict, stating that “no reasonable jury could have found that the University was more negligent than [the plaintiff] and that the jury’s monetary award was the result of sympathy, passion or prejudice.”\textsuperscript{229} The court reduced the award to $4 million.\textsuperscript{230} On appeal, the Colorado Supreme Court reversed, concluding that there was no evidence of liability on the part of the university; thus, the injured student was not entitled to recover damages from the University of Denver.\textsuperscript{231}

\textsuperscript{226} Torres v. Sarasota County Pub. Hosp. Bd., 961 So. 2d 340, 345 (Fla. Dist. Ct. App. 2007) (“Damages are measured by comparing the condition plaintiff would have been in, had the defendants not been negligent, with plaintiff’s impaired condition as a result of the negligence.”)
\textsuperscript{227} Univ. of Denver v. Whitlock, 744 P.2d 54, 56 (Colo. 1987).
\textsuperscript{228} Univ. of Denver v. Whitlock, 744 P.2d 54, 56 (Colo. 1987).
\textsuperscript{229} Univ. of Denver v. Whitlock, 744 P.2d 54, 56 (Colo. 1987).
\textsuperscript{230} Univ. of Denver v. Whitlock, 744 P.2d 54, 56 (Colo. 1987).
\textsuperscript{231} Univ. of Denver v. Whitlock, 744 P.2d 54, 62 (Colo. 1987).
In another case, by contrast, the amount of damages at issue was far less than $4 million. An appellate court in Louisiana held that an award of $300,000 to a hazing victim was grossly excessive.\textsuperscript{232} Noting that the plaintiff’s own attorney had only asked the jury to award $100,000, the court stated that awarding $300,000 was “tantamount to an imposition of punitive damages.”\textsuperscript{233} After reviewing the medical evidence and observing that the victim Kendrick Morrison’s injuries were primarily psychological (and that he had mental issues even before the hazing occurred), the court reduced the amount of damages from $300,000 to $40,000.\textsuperscript{234} In a concurrence filed in the \textit{Morrison} case, one judge indicated that he would have further reduced the damages to “no more than $25,000” and that he would have apportioned only twenty percent of the liability to the university, assigning eighty percent of the fault to the individual fraternity member who inflicted the beating.\textsuperscript{235}

These cases illustrate the point that the determination of the amount of damages will vary tremendously depending on the specific facts, the rules in the particular jurisdiction, and the apportionment of fault decided upon by the court.

Moreover, statutory caps on the amount of damages exist in many states, thus making a tort claim less attractive to plaintiffs.\textsuperscript{236} While these statutory caps do not affect the recovery of damages from private universities, the laws do affect relief from state colleges. For example, the legislature in Florida has limited the amount of damages that can be paid by state agencies to


\textsuperscript{235} \textit{Morrison} v. Kappa Alpha Psi Fraternity, 738 So. 2d 1105, 1125 (La. Ct. App. 1999) (Stewart, J., concurring in part and dissenting in part). \textit{Brueckner v. Norwich University}, 730 A.2d 1086 (Vt. 1999) is another case involving hazing where the court held that the college was liable to the student for injuries. In that case, the court upheld the award of compensatory damages but set aside the award of punitive damages since there was no finding of malice.

$200,000 for a single claim. The rationale is that the state gets its funds from taxes, and if the state has to pay high sums in civil cases, the burden will fall unfairly on taxpayers. At least thirty-three states have statutory limits on the amount of compensatory damages that the state can pay.

3. **Immunity From Suit and Avoidance of Liability**

Many states have statutorily barred some types of tort actions against state entities. In addition, various immunity doctrines shield universities and their administrators from suit. An early source of immunity for universities was the applicability of the doctrine of *in loco parentis.* In the days when universities fulfilled the parental role as custodians of their students, parents were immune from suit.

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238 See Michelle L. Findley, Note, *Statutory Tort Caps: What States Should Do When Available Funds Seem Inadequate*, 46 IND. L. REV. 849, 854 (2013) ("The fact that recoveries in tort against the government are funded by taxpayers’ dollars makes tort claim caps a necessity.").

239 COLO. REV. STAT. § 24-10-114(1); FLA. STAT. ANN. § 768.28(5); GA. CODE ANN. § 50-21-29(b); IDAHO CODE ANN. § 6-926(1); 705 ILL. COMP. STAT. 505/8(d) (West 2007); IND. CODE ANN. § 34-13-3-4(a) (LexisNexis 2008); KAN. STAT. ANN. § 75-6105(a); KY. REV. STAT. ANN. § 44.070(5) (LexisNexis 2007); LA. REV. STAT. ANN. § 13:5106(B)(1)–(2) (2012); ME. REV. STAT. ANN. tit. 14, § 8105(1); MD. CODE ANN., STATE GOV’T § 12-104(a)(2) (LexisNexis 2009); MASS. GEN. LAWS ANN. ch. 258, § 2 (West 2004); MINN. STAT. ANN. § 3.736(4) (West 2013); MISS. CODE ANN. § 11-46-15(1); MO. ANN. STAT. § 537.610(2) (West 2008); MONT. CODE ANN. § 2-9-108(1) (2013); NEB. REV. STAT. ANN. § 81-8-224(1) (LexisNexis 2011) (providing that the legislature must review all claims above a certain amount before they can be paid); NEV. REV. STAT. § 41.035(1) (2013); N.H. REV. STAT. ANN. § 541-B:14(I) (LexisNexis 2006); N.M. STAT. ANN. § 41-4-19(A)–(B); N.C. GEN. STAT. § 143-299.2 (2011); N.D. CENT. CODE § 32-12-22-02(2) (2010); OKLA. STAT. ANN. tit. 51, § 154(A) (West 2008); OR. REV. STAT. ANN. § 30.271(2)–(3) (West 2013); 42 PA. CONS. STAT. ANN. § 8528(b) (West 2007); R.I. GEN. LAWS § 9-31-2 (2012); S.C. CODE ANN. § 15-78-120(a)(1)–(3); TENN. CODE ANN. § 9-8-307(e) (2012); TEX. CIV. PRAC. & REM. CODE ANN. § 101.023(a) (West 2011); UTAH CODE ANN. § 63G-7-604(1) (LexisNexis 2011); VT. STAT. ANN. tit. 12, § 5601(b) (2002); VA. CODE ANN. § 8.01-195.3; WYO. STAT. ANN. § 1-39-118(a). Additionally, Delaware limits damages against municipalities and counties without limiting damages against the state. See DEL. CODE ANN. tit. 10, § 4013(a).


242 Peter F. Lake, “The Rise of Duty and the Fall of In Loco Parentis and Other Protective Tort Doctrines in Higher Education Law.” 64 Mo. L. Rev. 1, 6-7 (Winter 1999)(describing the historical context and noting that parents were immune from suit).
students, the immunity of parents from suit by their children also shielded the institutions from negligence suits.\textsuperscript{243}

Administrators who are employed at public institutions are usually entitled to raise qualified immunity defenses.\textsuperscript{244} An early example of a public institution successfully invoking governmental immunity was the 1924 case of \textit{Davie v. Board of Regents of the University of California}.\textsuperscript{245} Those who work for private institutions, on the other hand, may be able to claim charitable immunity.\textsuperscript{246} As early as 1925, a private university was immune from suit because it was characterized as a charitable entity.\textsuperscript{247} More recently, a plaintiff brought suit when he was injured in a slip-and-fall incident on the campus of a private school, Princeton University, but his claim was barred due to charitable immunity.\textsuperscript{248}

Both public and private colleges can also shield themselves from liability—but not from suit—by asserting the “no duty” defense.\textsuperscript{249} According to one commentator, “the ‘no duty’ defense is alive and well in higher education tort cases . . . [and] [u]ntil such a defense is completely abrogated, college and university attorneys will and should continue to defend allegations of negligent supervision . . . [by] using the absence of a cognizable legal duty [to}

\begin{itemize}
\item\textsuperscript{243} \textit{Id.}
\item\textsuperscript{245} Davie v. Board of Regents, 227 P. 243 (Cal. Ct. App. 1924).
\item\textsuperscript{247} Hamburger v. Cornell, 148 N.E. 539, 546 (N.Y. 1925).
\end{itemize}
supervise] as a prime defense.”

In that way, although some universities will not be immune from suit, they will not be held liable ultimately.

III. DISCUSSION OF PARENTAL EXPECTATIONS, THE STUDENTS’ ROLE, AND THE UNIVERSITIES’ RESPONSIBILITIES

A. Will Modern Expectations and Resulting Pressure From Parents Lead to a Return to the Concept of a Duty Based on In Loco Parentis?

In the thirty-five years since Bradshaw, courts have echoed the firm position that the doctrine of in loco parentis no longer applies to the role that universities fulfill vis-à-vis their adult students. This Article argues that the predominant view of the past thirty-five years should remain the same with regard to universities’ liability for alcohol-related incidents: the college owes no legal duty to supervise or protect adult students from voluntary intoxication. A return to the in loco parentis rationale—even if parents may wish it—is inconsistent with the true purpose and goals of higher education. Parents today expect more from college administrators and staff (in terms of supervision and protection) than in recent-but-earlier decades.

The current generation of parents has been described as “helicopter” parents because they hover over their children and are loath to leave them unattended. Even after the child reaches the age of majority, many parents still exhibit an unwillingness to relinquish control. Undergraduate deans at prestigious schools such as the University of Michigan, the University of Chicago, New York University, and the University of Washington reported that as of the past few years, parents have been contacting the schools to find out about their adult children’s grades, finances, and


251 As the parent of a college student, I wish fervently that if a harmful situation were to arise, the university would protect my daughter from injury and folly. On the other hand, I know from being a university administrator for more than twenty years that such a wish is unreasonable and impracticable. Moreover, it is not legally required.
housing arrangements.\textsuperscript{252} It is not uncommon for parents to investigate the assigned roommates before delivering their children to the freshmen dormitories, and parents who find Facebook postings that leave a bad impression have been known to request that the college reassign the roommates. \textsuperscript{253} Parents even get involved in disputes over grades, arguing with a professor that a “B+” should have been an “A-,” for example.\textsuperscript{254}

These parents are the same individuals who grew up during the Vietnam War, earned the right to vote at eighteen, and attended college during the 1970s and 1980s. Most came of age during the peak of the time period when university students asserted their rights as adults and rejected the idea that they needed supervision by college officials or any authority figures. It was not until the late 1960s that some colleges experimented with coeducational, open (uncontrolled access to rooms) dormitories.\textsuperscript{255} The freedom to come and go from the dormitory rooms of the opposite gender accompanied many other freedoms and privileges of adulthood that students demanded and obtained. Demonstrations against the Vietnam War and against corporate investments in South Africa sparked violence on campuses such as the University of California-Berkeley, the University of Wisconsin-Madison, Cornell University, and Columbia


\textsuperscript{253} Tamar Lewin, “Roomates, The Online Version,” The N. Y. Times, Sept. 13, 2006, http://www.nytimes.com/2006/09/13/education/13college.html?_r=2&module=Search&mabReward=relbias%3As%2C%5B%22RI%3A6%22%2C%22RI%3A18%22%5D (“Given the proliferation of “helicopter parents,’’ hovering and ready to swoop down and rescue their children, it was perhaps inevitable that this year’s assignments of roommates prompted a stream of complaints to university housing offices, asking for a change of roommate because of something posted on Facebook.” “Sexual orientation, drinking, drugs and tattoos seem to prompt the most parental complaints to colleges.”).


The National Guard’s shooting of four student protesters at Kent State in 1970 became a tragic, galvanizing moment in the student movement. Now, a few decades later, these individuals are unwilling to allow their adult children to enjoy the same independence that they themselves had insisted upon as college students. Not only is this situation ironic, but it may have a legal impact on the role that college administrators play. Indeed, it may have some effect on whether universities will—in the future—be found to have a legal duty to protect and supervise adult students.

It is conceivable, but not ideal, that the law may shift to represent the contemporary standards based on what current “helicopter parents” want the role of the colleges to be. Helicopter parents prefer to be directly involved in their students’ lives, but if their involvement is curtailed, they expect the university to assume the role of caretaker. As parents exert pressure on college administrators to increase their supervision over the lives of students, an echo of the old refrain of “in loco parentis” undergirds some of the parental requests. Perhaps there is a cry for a return to the more protective era of the 1950s. Many families expect the university to safeguard their children, and many, if not most, regard their eighteen-year-olds as children, not adults. Nonetheless, one important aspect of higher education is that students develop into responsible adults. The court’s reasoning in Baldwin v. Zoradi is sound:

The transfer of prerogatives and rights from college administrators to the students is salubrious when seen in the context of a proper goal of postsecondary education—the maturation of the students. Only by giving them responsibilities can students grow into responsible adulthood. . . [and] the overall policy of stimulating student growth is in the public interest.

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The law evolves and responds to changing social and political views, and an example of this reflection on contemporary values is found in the Bradshaw case when the court stated, “There was a time when college administrators and faculties assumed a role in loco parentis . . . [b]ut today students vigorously claim the right to define and regulate their own lives.”

**B. Is a University Negligent When It Fails To Enforce Its Rules?**

Parents might think that if a university has rules against serving alcohol at student events, but fails to enforce those rules, the university would be found negligent. Precedent does not support this view. The legal analysis begins with the threshold question of whether a university owes its adult students a duty to protect and supervise them at all. The answer is almost always “no.” A handbook provision does not create a duty on the part of the university to supervise students in circumstances involving alcohol, as noted.

It is a bit jarring to think that a failure to enforce regulations is not negligence. One wonders why the university publishes rules if it has no legal duty to enforce them. One court spoke in terms of the university reserving the right to take action (under its rules), but emphasized that the university was not obligated to take affirmative steps to enforce its handbook provisions. This reasoning reflects the pragmatic position that it is simply unrealistic and overly burdensome to require colleges to monitor their students’ social lives. Additionally, there is a legally significant difference between nonfeasance and misfeasance. The failure to act is nonfeasance, which has not typically resulted in liability for negligence in college

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259 Bradshaw v. Rawlings, 612 F.2d 135, 140 (3d Cir. 1979).
260 See note 150, supra., and accompanying text.
alcohol cases. Where nonfeasance is alleged, liability will attach only where a special relationship exists between the plaintiff and the defendant.

In addition to violating a university’s policies, underage drinking violates state law. However, the courts have said that that such illegality does not affect the university’s duty in tort law. The fact that a student violates the law does not mean that the university has a duty to prevent that student’s actions. As the court stated in Beach, a student’s violation of a law does not mean that a college has assumed a custodial relationship for tort purposes. Perhaps a simple analogy to the criminal justice system is apt. A sheriff has the authority to arrest criminal offenders, but the sheriff is not negligent for failing to track down and detain each and every law breaker. Similarly, the college has the authority to punish students who break the rules, but is not obligated to identify and penalize every offender. A violation of the law by a student may give rise to punishment, but it does not change the college/student relationship itself. Absent a special relationship, nonfeasance does not lead to liability under a negligence theory.

C. How to Create a Cultural Change on Campus by Educating Students and Reducing Alcohol-Related Harm

Students need to receive more guidance on how to drink responsibly, which is admittedly even more challenging when their consumption is illegal. There is a logical leap that one must make if arguing that engaging in illegal activity can be done in a responsible manner. That said, there are educational programs that have met with success on some college campuses.

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266 Beach v. Univ. of Utah, 726 P.2d 413 (Utah 1986).
267 An analogy could be drawn to the ethical canons for attorneys, which are expressed aspirational goals for conduct. The canons are not enforced as rules. Rather, it is the actual rules of professional responsibility – adopted by each state – that are enforced as minimum standards of behavior.
268 Beach v. Univ. of Utah, 726 P.2d 413, 419-20 (Utah 1986) (quoting Bradshaw, 612 F.2d at 141).
A notable example is the social norming marketing campaign that was launched in 1999 at the University of Virginia. The university’s campaign involved dormitory posters, educational programs, email messages, and special interventions aimed at high risk groups such as athletic teams and Greek organizations.270 Some of the educational programs were presented by professionals, but others were presented by students.271 The goal was to correct misperceptions about alcohol consumption on campus and to reduce the harm related to alcohol abuse.272 “Social norms theory” refers to the practice of introducing the subjects (students) to a large amount of accurate information about typical, normal behavior.273 In other words, the marketing campaign was intended to educate students about alcohol use on campus so as to correct the misperception that other students drank more frequently and more excessively than they actually did. The ultimate goal of the project was to teach students how to handle situations involving alcohol abuse so as to reduce the negative consequences of excessive drinking at the University of Virginia. The campaign coached students on protective behaviors such as not leaving

inebriated friends alone, intervening to prevent drinking and driving, asking friends not to drink so fast, having a designated driver, and eating a meal before drinking.\(^\text{274}\)

The effort has been fairly successful. The university has curbed some excessive student drinking and has modified the culture of student drinking. Researchers found that the negative consequences of drinking alcohol declined markedly after students were exposed to educational messages about drinking.\(^\text{275}\) The researchers compared the negative consequences of drinking as experienced by students during the years of the study. One example of a negative consequence was that a student “performed poorly on test or project.” With regard to that consequence, the odds ratio declined from .97 in 2002 to only .45 in 2006 after the marketing campaign. Significantly, the data as to those who “had been injured or hurt” showed a decrease from .95 in 2002 to .34 in 2006. Additionally, students reported fewer incidents of driving under the influence with the numbers being reduced by .39 by 2006.\(^\text{276}\)

This study of the social norming message campaign provides an answer as to how to begin solving the problems of alcohol abuse on college campuses. Although some researchers have claimed that excessive drinking has continued unabated despite educational programs at various universities, the University of Virginia’s social norming campaign provides a well-


documented glimmer of hope that behaviors can be changed and that the culture surrounding drinking can become healthier. A similar model has been applied by other universities, for example, the Student Health Alcohol Drug Education (SHADE) program at the University of Arizona.277 Students who violate the school’s alcohol and marijuana policies are referred to a class where they are taught how to calculate their own blood alcohol concentration, how to pace their intake so as to avoid intoxication, and how to recognize when it is time to stop drinking.278

Such educational programs provide an excellent way for students to take responsibility for themselves and their peers. Students’ willingness to be proactive shows the type of maturation that courts have described when speaking of the importance of allowing students to develop into responsible adults.279

IV. CONCLUSION

The courts face the challenge of how to reconcile competing views of what the university’s role in society is and what it should be in light of tragic alcohol-related injuries that befall young adult students whose families have sent them off to college with high hopes. In two particularly difficult areas that have attracted national attention, hazing and sexual assault, there is understandable pressure to hold university officials accountable for the devastating physical injuries and psychological harm that college-aged victims are suffering. The White House has turned its attention to sexual assault on college campuses, and is calling for universities to increase their preventive measures.280

280 See, White House Task Force to Protect Students from Sexual Assault, Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault, (2014). In
To the extent that the law is shaped by contemporary societal values, the significant pressure from the new generation of parents may reform the notion of duty in the university setting. It may be possible that the law will evolve “full circle,” having started in the 1940s and ‘50s era of in loco parentis, then progressing through a half century of students being treated as independent adults, and then swinging all the way back to the university’s protective role. This change would be triggered by the helicopter parents’ desire to have someone at the university hover over their offspring and shield them from harm. Courts are not currently adopting this social view, and the weight of precedent does not support it, but it may come to be. If that were to happen, it would be a negative development for the students as maturing individuals and for society as a whole. To revert to the position that universities are the custodians of their students would, as one court put it, “directly contravene the competing social policy of fostering an educational environment of student autonomy and independence.” A return to the doctrine of in loco parentis would be ill-advised, no matter how much the current generation of helicopter parents may wish for colleges to take care of their offspring in situations when the parents themselves cannot be there. One of the fundamental purposes of higher education is to shape young adults and to allow for the maturation process.

addition, colleges will be held accountable for violations of Title IX if incidents of rape and other sexual assaults are not properly investigated and addressed.

Nicholas W. Woodfield, “The Policy/operational Dichotomy in Intra-State Tort Liability: An Example of the Ever-Continuing Transformation of the Common Law”, 29 Denv. J. Int’l L. & Pol’y 27, 29–30 (2000) ("Because the laws of each respective State are continually developing and evolving in an attempt to reflect and define the contemporary values and morals of their society in order to achieve a more perfect sense of justice as viewed from within each State, . . . as a society continues to evolve and develop, its common law will also continue to evolve and develop to reflect this dynamism.").

Moreover, a scientific study shows that well-intentioned helicopter parents may be harming their adult children. Specifically, the study shows that parental interference undermines their offspring’s ability to solve problems and sends the “message to their children that they are not competent.” Helicopter parenting “decreased adult children’s feelings of autonomy, competence and connection,” concluded the report.

It is important for students to develop their own sense of responsibility, their own decision-making ability, as well as their own awareness of risks and consequences. Not only do students deserve the chance to develop into mature decision-makers for their own sakes, they need to become productive for the sake of the greater community so they can hold down jobs, pay bills, take care of themselves, and participate effectively in civic and social activities. Even if the college were to assume a custodial role by attempting to regulate students’ private lives (which would likely be almost impossible to do), the college would then be undermining its own goal of fostering the students’ development and maturation. Universities do not, and should not, have a duty to protect young adults from their own choices, however risky those choices may be.

Some argue that the “scourge of crude binge drinking” coincided with the change of the drinking age to twenty-one, for instead of being permitted to socialize, drink, and flirt in a “controlled public environment,” students drink privately in “boorish free-for-all” social

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settings. Although some statistics refute the assertion that amount of drinking by students has increased, many university presidents support an initiative to lower the drinking age so that eighteen-year-olds can legally consume alcohol. Requiring students to abstain from drinking leads to clandestine alcohol abuse (and other bad practices such as obtaining fake identification cards) and fosters disrespect for the law, such campus leaders believe. Advocates argue that the drinking age should be changed back to eighteen, claiming that it is “absurd and unjust that young Americans can vote, marry, enter contracts and serve in the military at 18 but cannot buy an alcoholic drink in a bar or restaurant.” This Article does not focus on the drinking age itself, but rather supports changing the culture surrounding social drinking. The social norming study conducted by the University of Virginia researchers gives hope that the culture can gradually be changed.

Parents can encourage students to act responsibly, but must resist the urge to hover over them. “College is a time when parents can grant their children the precious opportunity to take

287 See note 13, supra., and accompanying text.
288 See the Amethyst Initiative website for a list of 136 college presidents and chancellors who support the age change, available at http://www.theamethystinitiative.org/statement/. Their statement is that “a culture of dangerous, clandestine ‘binge-drinking’—often conducted off-campus” exists, and that trying to enforce abstinence from alcohol “as the only legal option has not resulted in significant constructive behavioral change among our students.” The statement continues, “[a]dults under 21 are deemed capable of voting, signing contracts, serving on juries and enlisting in the military, but are told they are not mature enough to have a beer. By choosing to use fake IDs, students make ethical compromises that erode respect for the law. HOW MANY TIMES MUST WE RELEARN THE LESSONS OF PROHIBITION?”
289 Id.
291 See note 271, supra., and accompanying text. The cultural change may come as a result of cases that involve the actions of intoxicated third parties. In a single year, more than 690,000 students between the ages of eighteen and twenty-four reported that they had been assaulted by another student who had been drinking. National Institute on Alcohol Abuse and Alcoholism (NIAAA), July 2013 report, available at http://pubs.niaaa.nih.gov/publications/CollegeFactSheet/CollegeFactSheet.pdf, last visited on June 14, 2014. The societal interest in preventing tragic, violent attacks by drunken students is significant. In the few cases where courts have found that the university owed a duty to protect its students from alcohol-related injuries, the facts have involved attacks by third parties. Although the predominant rule is that universities have no special relationship with their students, and thus, no duty toward them, that rule may be eroded in particularly heinous cases.
responsibility as they develop into independent young men and women, fully prepared to be productive and engaged citizens,” two senior university administrators wrote recently. To the parents of children who don’t like their roommates, teachers, academic advisers or grades, we urge empathy and calm. The social and survival skills young people develop in these situations will serve them well later in life.

Parents are being encouraged to discuss health risks, including alcohol use, sexually transmitted diseases, and sleep deprivation, with their college-bound children. To broach subjects such as how to handle social settings where excessive drinking occurs, parents can talk about how their student can protect her friends if she sees them taking risks. Using this approach is an easier way to discuss a difficult topic than preaching to the student about her own behavior. Parents can get involved in a positive way: “[W]e implore our parents, remind your children that, in an environment of almost total freedom, it will now be up to them to make responsible decisions about alcohol and sex.” There is a fine line between hovering, which is over-parenting, and fulfilling a strong parental role. The challenge is for parents to provide appropriate guidance, with help from the greater community and some assistance from universities, as well.

The responsibility for curbing alcohol consumption cannot successfully be shouldered by college administrators alone, however. Partnerships with local law enforcement, merchants, and community leaders—as well as with student organizations on campus—can reduce alcohol violations. Of particular importance, too, is the positive and appropriate influence of parents and family members. The National Institute on Alcohol Abuse and Alcoholism reports that students whose parents have talked with them about alcohol use are more likely than other students to abstain or to avoid binge drinking.

Imposing the tort liability upon college administrators for harm that results from students’ drinking is not the answer to the problem. As one court indicated, “The imposition of a duty to exercise care . . . would hold the University liable for a risk it neither created nor exacerbated nor can readily abate. . . . [S]uch a duty cannot be imposed without resurrecting the university’s role of in loco parentis, which is no longer feasible, even accepting the doubtful assumption it would be wise.” In the context of tort law, this assertion is accurate, and a legal duty should not be imposed. However, in the broader social context, encouraging universities to engage in social norming message campaigns is a laudable idea and may help reduce alcohol-related injuries. Finding a solution that is based on preventive measures—rather than litigation after injuries occur—is ideal. Allowing parents to offer guidance is appropriate, but permitting

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298 There are various ways of cracking down on abuse of alcohol on campus in addition to university procedures and policies. Bringing a negligence suit against the university is not likely to lead to relief for injured students or their families. However, criminal charges can be filed against the offending students in unlawful situations such as those involving horrific hazing. See, e.g., Lloyd v. Alpha Phi Alpha Fraternity, No. 96-CV-348, 97-CV-565, 1999 WL 47153 at *11 (Jan. 26, 1999) (where the civil court specifically referenced the possibility of criminal punishment for hazing.


301 See note 276, supra., and accompanying text.
parents to become overly involved in the choices made by their adult children is counterproductive.

In general, the university has no heightened, specialized duty to care for adult students, and this “no duty” approach is appropriate. A return to in loco parentis is not regarded as a feasible option. One California court described the old days of in loco parentis and noted that the doctrine no longer applies: “[C]ourts have not been willing to require college administrators to reinstitute curfews, bed checks, dormitory searches, hall monitors, chaperons (sic), and the other concomitant measures which would be necessary in order to suppress the use of intoxicants and protect students from each other.”302 Another court summed it up, saying, “We find unpersuasive the argument that college students—the great majority of whom are over eighteen years old—are so immature that they should be considered wards of their particular institution of higher education while the people of this country have found those same students as a whole to be mature enough to exercise the most sacred right [the right to vote] a democracy can bestow.”303

In summary, the no duty rule is the right approach, as universities should not be held responsible for monitoring the private lives of their students. Growing into mature adulthood involves taking risks and learning that accidents have consequences even though the results can be tragically harsh for students and their loved ones.

303 Beach v. Univ. of Utah, 726 P.2d 413, 418 n.4 (Utah 1986).