

# **ISSUES REGARDING THE PREVENTION AND MANAGEMENT OF PREMISES LIABILITY CLAIMS**

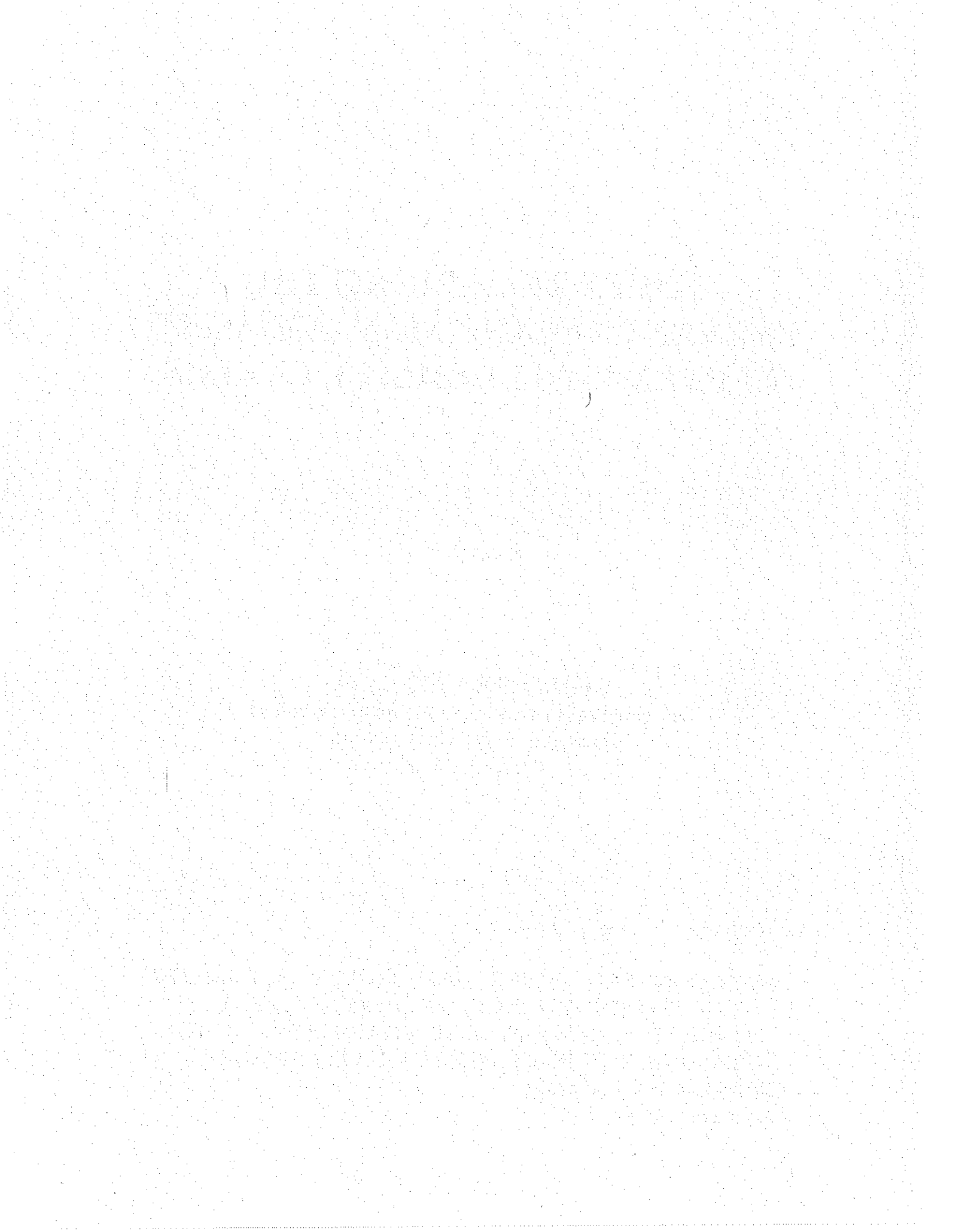
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**WORKSHOP: PREVENTING TORT LIABILITY AND LOSSES-  
IDENTIFYING THE ORIGINS OF TORT/ACCIDENT  
LIABILITY AND DEFINING APPROACHES THAT LIMIT  
PERSONAL INJURY CLAIMS FOR CIVIL DAMAGES**

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THE PREVENTION AND MANAGEMENT OF  
PREMISES LIABILITY CLAIMS**

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## **I. Introduction**

Colleges constantly struggle to balance their budgets by examining facilities issues that are both expensive and laden with liability related overtones: rental of institutional property to non-college agencies, public safety enhancement, fraternity risk management, and deferred maintenance. In order to properly analyze these issues, some basic concepts require review and consideration.

## **II. Negligence**

In general, if someone has been injured by some university misconduct or omission, the law that governs the resolution of the rights of the parties is called the “law of torts”. Sometimes the law of torts is brought into focus by a contractual relationship between the parties, such as a lease or license to use the premises. In all cases, tort law is state law and therefore varies, sometimes dramatically, from state to state.

In an actual lawsuit, the person seeking relief must prove at least negligence. The claims of negligence to be concerned with could include: negligent maintenance of premises, negligent security, negligent representations, and negligent failure to give reasonable warnings.

If a person feels that they are a victim of negligence they must prove four elements in order to win a judgement. The elements are: (1) duty; (2) breach of duty; (3) causation (both in fact and proximate) and (4) damage.<sup>1</sup> If the plaintiff proves all four of these they have established a “prima facie case” of negligence. At that point, the burden of sustaining the winning argument shifts to the defendant who must come forward affirmatively with a defense.

Some elements of a tort case are things that a judge rules on while others are for juries to decide. For instance, a judge normally rules on whether a duty is owed. If a duty is established to the satisfaction of the judge then the jury gets to rule on whether or not the defendant breached its duty and caused the injury.

### **Duty**

(a) Duty is the first and perhaps, the key element in most negligence claims. Assume I





have a broken stair tread on my stairwell. That does not mean I owe a duty to a stranger who might use those stairs. Yes, there is negligence in allowing the condition to persist but I don't owe a safe stair to everyone who comes along. If I invite someone to my facility then I have created a relationship in which I have a duty to provide safe premises. I may not have that same duty to a trespasser.

(b) If I have an ordinary duty to someone, I must exercise some care for that person's safety. This leads to the next question: how much care is due? This is known as identifying the "standard of care". In most instances, the standard of care has been adjudged to be that level of care that an ordinary prudent person would exercise in similar circumstances.

### **Breach of Duty**

The second element, breach of duty, is typically a question of fact for a jury. The central question is this; since you have a duty and an applicable standard of care, did you actually impart the amount of care minimally necessary to comply with that duty and standard?

### **Causation**

The third element, causation, falls into two categories: factual causation and proximate causation. Did the breach of duty actually in fact, cause the harm? Secondly, was there some intervening factor which really generated the injury even though your negligence set the stage?

### **Damage**

The final element, damage, is simply evaluating and proving that there is an injury that has caused the plaintiff to experience a loss.

## **III. Premises Liability**

When leasing or licensing premises, campuses generally fall into a special relationship developed by contract. There is a premises (almost landlord) relationship that begins to exist. Landlords owe maintenance responsibilities to their tenants and the courts have held universities



liable in some specific instances as follows: (a) a university has a duty to use reasonable care to warn of significant dangers associated with excavation,<sup>2</sup>(b) students are invitees and are entitled to reasonable care in premises maintenance,<sup>3</sup>(c) a college has the same duty that any private land owner has regarding removal of dangerous accumulations of snow and ice on its premises,<sup>4</sup>(d) a university has a duty to maintain athletic facilities in a reasonable condition but, not to prevent all student injury from participation in athletics,<sup>5</sup>and (e) a university has a duty to use reasonable care to maintain a safe parking garage, including fixing dangerous holes<sup>6</sup>.

### Case Studies

St. Michael's College in Colchester, Vermont escaped liability in 1973 because<sup>7</sup>college personnel did not know of a dangerous condition on its premises that led to the plaintiff's injuries. While the Court found that St. Michael's owed its invitees a duty of care, its lack of knowledge suggested that no duty had been breached. The facts suggest that the plaintiff was injured while skating on an ice rink located on the college's campus. The rink was maintained by the college for pleasure skating and the plaintiff was a student therefore, an invitee. The student fell when his skate hit a small imperfection on the ice. The Court found that the college owed the duty to its invitees to keep the rink "reasonably safe" but that the imperfection had not existed for a substantial period of time such that the college could have been on notice that it was there and needed to be fixed. So, in Vermont, it's safe to say that a land owner owes an affirmative duty of protection to an invitee which means there is a duty to maintain property in a safe condition and one must exercise reasonable care in protecting an invitee from injury. However, the defendant's knowledge of the risk of injury is crucial to establishing liability in the case. In order to impose liability for injury to an invitee by reason of the dangerous condition of the premises, the condition must have been known to the owner or have existed for such a time that it was the owner's duty to know it.<sup>8</sup>

Some conditions are less obvious than others. A case in California<sup>9</sup> held a university liable when the dangerous condition on its campus was, in fact, people known to be firing BB guns on the campus thereby injuring a passer-by riding on campus in an open pick up truck. The



incident occurred during a college sponsored or licensed activity and the Court suggested there was evidence brought forth at the trial indicating that: (1) for at least two years prior to the incident university personnel had been aware that BB guns were used on campus by young boys from the local community and some people had been injured and; (2) the university had a rule forbidding possession of BB guns but didn't consistently enforce it; and (3) although there were significant students and guests at the event no campus police officers were present.

An Ohio court in a case involving Youngstown State University determined that a student of a state university was an invitee; and, as a result, the University owed a duty to exercise ordinary and reasonable care to protect that student from an unreasonable risk of physical harm. In this case a student fell in a parking garage when she stepped in a hole in the pavement. The Ohio court found that the University was charged with constructive notice of the risk presented by the defect in the pavement and as a result this was a breach of duty of care owed to the Plaintiff as an invitee.<sup>10</sup>

A standard rule is that an invitee may be barred from recovering for injuries if the hazard which caused the injury is as readily apparent to the invitee as it is to the owner. The State of Tennessee raised this defense in a case where a former student was running across the campus of East Tennessee State University delivering food coupon booklets for a telemarketing company. The student cut across a courtyard which was bordered by metal pipe segments. As he tried to hop over the piping, the Plaintiff stepped on a pipe segment and caught his foot in the piping and broke his hip. The Tennessee Appellate Court determined that the hazard was not open and obvious and commented about the viability of the rule in light of the fact that "comparative negligence" is available in the State of Tennessee to apportion the relative fault of the invitee and the property owner.<sup>11</sup> (Comparative negligence is a concept by which the fault of the various parties to the lawsuit is allocated amongst the parties).

There are two other recent cases which also focus on the lack of duty of a property owner to warn against dangerous conditions which are readily observable. In Kurshals v. Connetquot Central School District<sup>12</sup> a fifteen year-old student was playing handball and went on the roof of the junior high school to retrieve a ball. He stepped on a skylight on the roof and fell through to



the gym floor and was injured. The New York court, while recognizing that a landowner has a duty to exercise reasonable care in maintaining property in a safe condition under all of the circumstances, including a duty to warn, determined that in this circumstance there was no duty to warn when it was obvious that the skylight was there and was not to be walked upon.

Similarly, in Pitre v. Louisiana Tech University<sup>13</sup> an unusual snow storm occurred in Louisiana and a student at Louisiana Tech joined other students who were sledding down a hill on campus near the football stadium. Mr. Pitre and three other individuals were riding a large garbage can lid down the hill when the lid went into the stadium parking lot and collided with the concrete base of a light pole. Mr. Pitre suffered permanent paralysis from the chest down as a result of the accident. Pitre sued Louisiana Tech alleging negligence on the part of the university based on a failure to erect cushions around solid objects to prevent sledding injuries and failing to warn students of hazards that might be encountered in sledding. Pitre won a multi-million dollar judgement at trial and the university appealed. The Louisiana Supreme Court stated that a landowner does owe an individual a duty to discover dangerous conditions and to either correct or warn of the existence of such conditions. The court further determined that because of the obviousness of the dangerous conditions (crashing into a light pole) there was no duty on the part of the university to warn of the apparent danger or to protect against the injury. The court rejected the notion that there was any special relationship duty created merely because Mr. Pitre was a student at the university.

There are several premises liability cases involving athletic or recreational facilities which have turned on the plaintiff's appreciation of the dangerous situation or condition.

In Daniel v. City of Morganton<sup>14</sup> the plaintiff Kristin Daniel was participating in a softball practice with her high school varsity softball team. The team was practicing on land owned by the defendant school board but leased and maintained by the defendant city. The field was being constructed by the city and the surface was rough and the city was unaware that the high school team was using the field. During practice Ms. Daniel was struck in the face by a batted ball that took a bad hop off of the rough field. The North Carolina Court of Appeals determined that the plaintiff was a licensee as to the defendant city and that any danger posed by the irregular playing field was open and obvious. Thus, there was no duty to warn regarding the





rough surface.

An interesting contrast is the case of McIntosh v. The Omaha Public Schools<sup>15</sup> where a high school football player attended a spring football clinic at his high school. The field used for this clinic was a hard packed field with little grass and a rutted and uneven surface. During the clinic the plaintiff, McIntosh, caught his foot in a hard rutted area and fell and fractured his leg. The Nebraska Supreme Court determined that the school system had invited McIntosh to attend the spring clinic thus making him a business invitee under Nebraska law. As such, the school board would be subject to liability for injuries if a jury found the field to involve an unreasonable risk of harm to a business invitee and the plaintiff would not discover the danger or would fail to protect himself against the danger. Here, McIntosh did recognize the danger but the jury would be charged with determining whether the defendant used reasonable care in maintaining the field. Thus, while an institution might be able to escape liability for defective athletic premises if the defect is obvious to the plaintiff, it is clear from the McIntosh case that at least in Nebraska, it is still incumbent upon colleges and universities to provide safe playing fields, inspect for hidden dangers, and to warn of obvious dangers.

The plaintiff in Rothbard v. Colgate University et al.<sup>16</sup> case sustained serious injuries when he fell from the second floor of his fraternity house. The plaintiff's room had a window which opened over the curved portico above the entrance to the fraternity house. The plaintiff had been drinking and his blood alcohol registered at 18%. The plaintiff sued Colgate and the fraternity for his injuries. His negligence claim was based on an alleged duty to control or supervise the conduct of students in the fraternity house. There were written rules saying that one under the age of 21 should be served or consume alcohol, and all roofs and porticos were off limits for all students. The plaintiff claimed that the university's failure to enforce its own rules was the proximate cause of his injuries. In rejecting the claim against the university, the New York Court said that colleges have no duty to protect their students from their own dangerous activities and pointed out that the student was not a child but an adult, responsible for his own conduct. However, the fraternity which owned the fraternity house was held to have a duty as a landowner to maintain the premises in a reasonably safe manner in view of the circumstances. The court determined that the failure to provide window safety stops could be a breach of the



owner's duty to maintain the premises in a reasonably safe condition. This would be a question for a jury to determine. New York attendees should view this case from the perspective of dormitory safety. Do all of your dormitory windows have safety stops?

### **Elevators**

Elevators can be a serious source of injury, especially with the proclivity for people to play in them. Therefore, it is important for defects to be monitored and repaired.

East Tennessee State<sup>17</sup> was sued by a student who was injured as a result of jumping from a stalled elevator. The plaintiff was a former student at East Tennessee State University, and he and a friend were visiting another student in a dormitory serviced by an elevator. In taking the elevator down with his friend, the elevator became stuck between floors for several minutes. The friend pried open the door and jumped approximately four feet to the floor below. Subsequently, the plaintiff also jumped but hit his head and fell backwards under the elevator and down the shaft, suffering serious injuries. The elevator had stopped because someone had dropped a set of keys down the shaft. The maintenance crew had brought the elevator to the first floor to be kept in place while someone went to the basement to retrieve the keys. The student employee who was to keep the elevator on the first floor allowed the elevator to rise to the fifth floor, so the plaintiff was able to board it. When the maintenance crew accessed the elevator shaft, the power to the elevator was automatically interrupted and, thus, the elevator stopped between floors. The court determined that the state's conduct in failing to take the elevator out of service was a lack of reasonable care and was the proximate cause of the injury to the plaintiff. The court found the plaintiff 25% at fault, but determined that the state was 75% at fault.

When elevators like all major pieces of equipment are serviced, there must be standard procedures established for stopping the elevators to insure that no one can board them while the service is being conducted. "Lock-out" concepts borrowed from OSHA are a good idea.

### **Public Street Issues**

Many colleges have city-owned streets which run through the campus, and the college may have no ability to maintain or regulate that street. In Obiechina v. Colleges of the Seneca<sup>18</sup> a



student left her residence hall and was crossing a city street which ran through the middle of campus in order to attend classes. As she was crossing the street, an automobile was attempting to park in front of her and she stepped backwards into traffic and was struck by another car. There were no crosswalks located on the street within the campus area. The injured student sued the college for failing to install, as well as failing to request the City of Geneva to install, appropriate crosswalks. The question for the court was whether a college owed a duty to students while crossing public streets located within the campus area. In reaching its decision, the court noted that other jurisdictions had failed to recognize any duty of care owed by property owners to users of property when injuries occurred as a result of crossing public streets adjacent to the property. The court held that "...absent proof of assumption of a duty by the school to provide safe passage, across the adjacent highway, together with reliance thereon, the mere fact that the injured party was a student does not create a kind of special relationship to impose liability upon the school for negligent acts of third parties.

### **Liability for Third Party Criminal Acts**

In Savannah College of Art and Design, Inc. v. Roe, et al.,<sup>19</sup> the Georgia Supreme Court applied traditional negligence principals to a case in which a student was sexually assaulted in a dormitory. The Georgia Court noted that since there was no evidence of the occurrence of substantially similar incidents of sexual assault, then there could be no factual issue as to whether the college knew or should have known that its dormitory residents were at risk for such a crime merely because the dormitory was in an urban setting.

A Florida court was willing to impose liability against an institution for the criminal acts of a third party at a practicum setting.<sup>20</sup> The Plaintiff was a graduate student attending Nova Southeastern University and was assaulted at an off-campus internship site. The court determined that Nova had been aware prior to the attack of a number of other criminal incidents near the internship site but did not reassign the Plaintiff or adequately warn her of the unreasonably dangerous nature of the site. The court focused on the special relationship which existed between the University and the student to impose a duty to use ordinary care in providing educational services. The court determined that ordinary care would include adequate warning to



the student of the dangers associated with the internship placement. Thus, a university which operates an internship program should inform its students, in writing, that certain internship sites are more dangerous than others and allow the student to select a less dangerous site for an internship whenever possible. Institutions with overseas programs, co-ops or other satellite sitings should pay particular need to the increased budget impact of learning about, advising and providing for safety issues at remote sites.

#### IV. Fraternity Liability (is it really a “premises” issue?)

##### General

The issue of university liability for fraternity activity is once again undergoing changes in existing case law. Interestingly, the issue currently appears to center itself upon the ownership of the fraternity building giving rise to the fact pattern, but most experts agree that judicial trends lean heavily towards responsibility for activities about which one had notice no matter where the occurrence.

Until quite recently, there was a well-established line of cases, starting with the famous Third Circuit case of *Bradshaw v. Rawlings*<sup>21</sup> which held that the doctrine of “in loco parentis” was dead at the college level and Colleges in general had no legal duty to shield their students from their own dangerous activities which create a risk of harm to themselves.

##### Activities of Students

A notable exception has always been existent with regard to this doctrine. If it is established that the university encouraged students to participate in a particular activity and took affirmative steps to regulate that activity, then a duty was held to have been created requiring the school to exercise due care in preventing foreseeable injury. The cases that related to this exception typically involved events which were sponsored by universities, and also featured some ongoing supervision by college personnel. The rule has been extended to cover the situation where colleges have become significantly involved in the control and supervision of students and thereby have effectively assumed a duty to control and thus protect its students.

Recently, primarily due to the prevalence of a great many hazing situations, some





courts are beginning to impose liability on the university itself but the liability theory is again based upon the College's status as owner of the fraternity house. In the typical personal injury case, it is clear that a landowner will be responsible for defects which exist on premises owned by that owner and which cause injury. This is so even where that property may be in the actual possession of others; some courts hold that the actual owner has a non-delegable duty with regard to premises it owns.

However, under certain circumstances, the Courts have begun to impose liability upon colleges for injurious activities of third persons which cause personal injury to students. Precisely, liability will be established where the owner was or should have been aware of injurious activities which are likely to occur or recur on premises and the owner additionally has the opportunity to control such persons who are involved in such activity.

Thus, liability can occur if the owner(whether it be College or fraternity) knows that illegal (or dangerous) activity was recurring on premises and, as owner, had sufficient control over the premises to prevent the situation which led to the injury in the first place. It would not take much judicial effort to reconstrue the definition of premises to include dormitory situations such as independently owned fraternities existing to provide housing exclusively for students.

### **Example**

The Lloyd<sup>22</sup> case is particularly illustrative of this doctrine. In that case, a person was injured as a result of hazing activity and sued Cornell and the fraternity. The fraternity house was owned by Cornell, but leased to the fraternity. The decision itself involved a combined motion for dismissal and motion for summary judgment. The dismissal motion brought by Cornell [which is a motion which only decides whether the initial paper complaint itself sets forth a cognizable claim without regard to the actual facts of the situation] was denied on the ground that the complaint on its face alleged that Cornell knew or should have been aware of the hazing activities being conducted at the fraternity house, and that the fraternity house was under the control of Cornell. However, after the initial analysis of the sufficiency of the complaint was made, the Court went on to dismiss the case on the summary judgment motion based upon an actual demonstration by Cornell (obviously after extensive depositions) of facts which



indisputably showed that Cornell did not have specific knowledge of recurring hazing, although it did have knowledge of isolated incidents in the recent past.

College liability for fraternity conduct has become especially worrisome with the recent (Oct. 1999) decision in *Knoll vs. University of Nebraska*.<sup>23</sup> Although the plaintiff suffered severe head injuries while attempting to escape from a hazing ritual in a privately owned fraternity house (which the Court recognized as a “student housing unit”), the Nebraska Supreme Court allowed the lawsuit to be initiated against the university on the theory that the activity was started by the abduction of Knoll while on university property. The Court held that the university could reasonably have foreseen the student’s abduction ( because testimony indicated it knew about recurring hazing activities by the Greek community). This appears to be consistent with the earlier Furek<sup>24</sup> reasoning expounded upon by the Supreme Court of the State of Delaware.

### **Caveat**

In April of 1998, Chief Judge Judith Kaye, writing for a unanimous New York Court of Appeals in *Rust v. Reyer*<sup>25</sup> extended the definition and hence the liability of persons “making alcohol available” to underage party guests. The case involved a fight in which the injured student sued the parents of another student claiming they were responsible for providing alcohol to the drunken assailant - even though they didn’t actually purchase or secure the alcohol but only appeared to provide the forum at which it was consumed. Judge Kaye wrote an opinion in which she clearly stated the Court’s decision to extend the social host liability statute in this case was in direct response to the social need to control the distribution of alcohol to minors. She openly opined that the case contained a message about the direction in which the Court would go in the future when deciding upon liability for conduct (not premises) cases arising in New York.

### **V. Public Safety Issues (as invitations to premises liability litigation)**

Having been blessed with the opportunity to present at this conference on many occasions, my concern about the vulnerability of higher education to the changing view of appellate courts regarding duty issues has been previously heard by many of you. My personal favorite case is the Pine Manor<sup>26</sup> case largely because Pine Manor can happen again and again to



any of us in any part of the country. Because of the seriousness of the injuries, the changing expectations of a largely college educated set of parents and a judiciary more balanced in its sexual composition, courts appear more comfortable challenging the traditional notions of duty upon which tort liability is based. The result is that one of us will be caught in a fact pattern which heretofore we thought was secure, but because of emerging changes in legal philosophy regarding duty, we will be the institution that becomes the hallmark for a redefinition of duty in our particular state jurisdiction.

I often advocate looking to other institution's published misfortunes as a viable tool for preventive risk management. The reason I enjoy using the Pine Manor episode is because from it came a set of standards developed by a very thoughtful inter-institutional task force and published for the benefit of all of us. I have attached a synopsis of these standards along with a recent genuine case study, as Appendix I.

## **VI. Liability Insurance**

Having established some baselines for the type of litigation about which we are concerned, the question arises what to do about it. The stock answer when universities make their premises available to other individuals is to pass on to the user the cost of the defense to the lawsuit and monetary damages, if any. It shouldn't matter that the user will either pay a fee or that the college simply offers the use of the property as a contribution. Insurance questions that arise are: which policy covers the user's activity and in what priority. The college attempts to pass off its responsibility to the guest by becoming an insured on the guest's liability policy. Liability insurance is that insurance which you have that pays someone else for injury that they sustained as a result of your negligence. It also pays for the defense of the claim even if, in the end, you are found not to be negligent. Sometimes the defense costs far exceed the damages.... especially if you win the case.

### **Additional Insured**

In every liability policy there is an issue about who is an insured. Obviously, the policyholder is insured but others can become "an additional insured" at the request of the



policyholder. An additional insured is any party who is not automatically insured under the policy but to whom the policyholder wishes to extend a measure of protection under its own policy. An additional insured status is accomplished by a means of an endorsement to the original policy and is provable by a certificate from the insurance carrier or its agent.

The policyholder extends additional insured status to a party under two circumstances: (1) a close insurable relationship of the additional insured to the policyholder; (2) the policyholder has a contractual relationship with someone else that is insurable.

An additional insured has direct rights to a policyholder's insurance policy and can demand that the policyholder's insurance company provide the additional insured with defense and indemnification. The additional insured need not pay these costs and then wait for reimbursement from the policyholder.

### **Primary Insurance**

The next question however, is the primary coverage question. In an effort to keep one's own insurance costs down, one seeks to assert as few claims as possible against its own insurance company remembering that even if the college is successful and wins the litigation, the insurance company must still pay to defend. The carrier also has to set aside a pot of money once a claim has been asserted. This pot of money is called its "reserve". Since every case has a reserve, it becomes important to insist that the guest's liability policy become primary over your own insurance policy so the college carrier's reserves are not tied up thereby avoiding a premium increase for the college's policy.

### **VII. Indemnification**

Another technique for diverting economic loss when making premises available to outsiders is to use a document called a hold harmless/indemnification agreement. This is an agreement between the parties which seeks to shift responsibility for liability losses from one person to another. It essentially says that if there was a claim brought against the university by virtue of the activity of the organization using the campus, then that organization will see to it that the university suffers no financial harm at all including the payment of legal fees necessary





to defend the claim. There are two important points to note here; (1) the document which on its face appears to answer all the questions does not in fact provide a financial basis for accomplishing what it purports to do. So, for example, a hold harmless/ indemnification agreement without a certificate of insurance to back it up with actual dollars may not be worth the paper upon which it is written. Even though the invitee has agreed to pay all the costs of a claim, if they don't have sufficient assets (or insurance) to do so, then their pledge to cover you is worthless. It also does not preclude the person suing the college from in fact winning its lawsuit against the college; it only says that if plaintiff wins, then guest pays.

Also, some states (like New York) refuse to allow you to pass off your own negligence anyway so even if the guest has agreed to assume all responsibility, if you in fact have caused the negligence with for instance, defective premises, you may be held responsive to the people that you have injured.



## **FOOTNOTES:**

1. Bickel, Robert D. and Lake, Peter F., The Rights and Responsibilities of the Modern University (Who Assumes the Risks of College Life?) Carolina Academic Press, 1999.
2. *Prairie View A&M Univ. v. Thomas*, 684 S.W. 2d 169 (Tex. App. 1984).
3. *Baldauf v. Kent State Univ.*, 550 N.E. 2d 517 (Ohio Ct. App. 1988).
4. *Mead v. Nassau Community College*, 483 N.Y.S. 2d 953 (App. Div. 1985).
5. *Henig v. Hofstra Univ.*, 553 N.Y.S. 2d 479 (App. Div. 1990).
6. *Malley v. Youngstown Univ.*, 658 N.E. 2d 333 (Ct. Claims Ohio 1995).
7. *Mortiboys v. St. Michael's College*, 487 F. 2d 196 (2d Ct. 1993).
8. Restatement (Second) of Torts §343 (1963-64).
9. *Stockwell v. Bd. of Trustees of Leland Stanford Junior University* 148 P. 2d 405 (Cal. App. 1944)
10. *Malley v. Youngstown Univ.*, (supra)
11. *Estate of James Archer Muse v. State of Tennessee*, 1997 Tenn. App. LEXIS 933.
12. *Kurshals v. Connetquot Central School District*, 643 N.Y.S. 2d 622 (App. Div. 1996)
13. *Pitre v. Louisiana Tech University*, 673 So. 2d 585 (La. 1996)
14. *Daniel v. City of Morganton*, 479 S.E. 2d 263 (N.C. App. 1997)
15. *McIntosh v. The Omaha Public Schools*, 544 N.W. 2d 502 (Neb. 1996)
16. *Rothbard v. Colgate University, et al*, 652 N.Y.S. 2d 146 (App. Div. 1997)
17. *Williams v. State of Tennessee*, 17 LEXIS 527 (Tenn. App.)
18. *Obiechina v. College of the Seneca*, 652 N.Y.S. 2d 702 (Sup. Ct. 1996)
19. *Savannah College of Art and Design, Inc. v. Roe et al*, 409 S.E. 2d 848 (Sup. Ct. Ga. 1991)



20. Gross v. Family Services Agency, Inc., 716 So. 2d 337 (Fla. App. 4 Dist. 1998)
21. Bradshaw v. Rawlings, 612 F. 2d 135 (3d Cir. 1979)
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Several case presentations used in this paper were initially developed in an excellent paper by:

Marshall, John D. Jr., Premises Liability, College/University Liability for Criminal Acts, Urban Campus Issues, and Sovereign Immunity presented at Stetson University College of Law Workshop: February 1999





## APPENDIX I

### Public Safety Issues Confronting Private Colleges: the Funding Priority Dialogue

On January 9, 1999 the New York Times ran a front page lead story that described the following scenario (at an institution like one of ours?):

A. In 1983 an institution sustained a serious violent incident at one its facilities, after which it conducted an investigation.

B. The investigation concluded with several recommendations among which was a security review of all of the institution's facilities and the funding of specific security measures including centralized gathering of information on security issues for quick analysis and response.

C. Thereafter, several senior institution administrators asked for the implementation of the recommendations of the report and were met with a denial because of "lack of funds" or "other priorities."

D. The administrator chiefly responsible for the security at the facility countered with requests suggesting that "..... the facility profile, in a congested, downtown location is cause for serious concern" and asked for a comprehensive review of the facility security status.

E. These warnings were met with the same lack of enthusiasm and the administrator was advised that a "new facility would be ideal" but that the administration had "reviewed the case and understood the concerns."

F. Repeated requests by the administrator were viewed by senior administration as though the administrator was "a nuisance who was obsessed by security" despite reports of criminal activity in the immediate area of the facility, including muggings. Items that were requested in the punch list included new garage doors, new perimeter fences, new types of doorways with closures and new locking systems.

G. In mid 1998 the institution suffered yet another devastating facilities incident which made national news for several days. This incident was capped by a second risk management report which reported a "collective failure" by several divisions of the institution over a period of time to provide adequate security to the facilities of the institution consistent with the recommendations of the first (1983) report.

H. The senior responsible institute official in accepting the new report stated "it reminds us all that no matter how much we care, no matter how much we do, we can always do more when the lives of our people are on the line."

#### Post Script:

1. A multiplicity of lawsuits is expected to follow citing both reports and media investigation footage as evidence of negligence (reckless disregard?; criminal negligence?)

2. In a decision made public January 11, 1999, the trial judge in the case against the City University of New York (and others) regarding foreseeability and the proximate cause of the wrongful death of nine people in a 1991 stampede at a College gymnasium wrote: "It does not take an Einstein to know that young people attending a concert...would not be very happy and easy to control if they were unable to gain admission to the event because it was oversold." (N.Y. Times 1/12/99 B-3)



## CAMPUS SECURITY STANDARDS

1. **Level of Security**  
-for students and staff to enjoy that average degree of security that is similar for citizens of the community.
2. **Administrative Responsibility**  
-security assigned by table of organization, designing authority.
3. **Building Access**  
-restrict, monitor or control access based on risks in the neighborhood, academic values and costs of enforcement.
4. **Grounds of Access**  
-is it feasible and advisable to restrict, monitor or control access to the campus grounds including outside visitors?
5. **Grounds Maintenance**  
-grounds-keeping standards viewed from security point of view.
6. **Adequacy of Outdoor Lighting**  
-outdoor lighting from a security point of view.
7. **Monitoring of Outdoor Lighting** -  
systematic report on lighting outage.
8. **Security Rules or Guidelines**  
-written rules for personal security should be realistic.
9. **Instructing Campus Community About Security Procedures**  
-ensure that all campus members are informed about security risks, procedure for summoning aid and reporting of all criminal incidents immediately.
10. **Information About Criminal Incidents**  
-systematic reports of criminal incidents should be made to administrators outside the campus security organization.
11. **Responsibility to Respond to Security Emergencies**-one or more persons, on duty, to respond to security emergencies at all times with responsibility for discretionary decisions.
12. **Security Personnel**  
-provide some campus or contract security personnel to patrol and safeguard institution; document alternative and recognize the administration has ultimate responsibility for number and quality of personnel provided.
13. **Administrative Oversight of Security Department**  
-chief of security should report to senior administrator.
14. **Supplemental Security for Special Events**  
-duties should be defined and all functions covered.
15. **Training Security Officers**  
-training should be commensurate with the functions to be performed and maintained on a current basis.
16. **Probationary Period for Security Officers**  
-period of six weeks or longer.
17. **Monitoring Performance of Security Officers**  
-document the process
18. **Discipline of Security Officers**  
-document procedures for disciplining officers.
19. **Arrest Powers**  
-if officers lack authority to make (something) or local police.
20. **Relations with Local Police**  
-establish communications and relations with local police.
21. **Incident Reports**  
-have report forms.



22. **Security Vehicles**  
-security transport as necessary for security coverage, patrol, escort and emergency aid.
23. **Equipment for Security Personnel**  
-patrol officers should have two-way radios, uniforms, flashlight, and handcuffs (if authorized to make arrests). Other equipment should be issued as necessary.
24. **Guns and Mace**  
-if security officers are authorized to carry guns or mace, the institution should ensure that all legal requirements are satisfied, officers are qualified for such weapons, written policy governs use of such weapons, all subject to at least annual review.
26. **Student Security Patrols**  
-must be supervised by security department and should not engage in confrontation with suspected wrongdoers.
27. **Tort or Shuttle Service**  
-as necessary for risky areas or students alone after dark.
28. **Coeducation Student Housing**  
-may be appropriate from a social and security point of view.
29. **Student Housing Security Rules**  
-assess the feasibility and desirability of having and enforcing rules controlling access of non-residents to student housing, based on security standpoint.
30. **Supervision in Student Housing**  
-on-campus or institution run off-campus housing for undergraduates should ensure responsible supervision for security of the residents; and provide adequate training.
31. **Locking Outer Doors to Student Housing**  
-at least during nighttime hours unless access is directly monitored at student housing entrance.
32. **Room Door Locks in Student Housing**  
with locks that are reasonably secure against tampering.
33. **Master Key Control**  
-maintain and document procedures to ensure key control.
34. **Security of Windows in Student Housing**  
-provide security hardware as necessary and have a system to monitor security of easily accessible windows.
35. **Instructing Resident Students about Security Procedures**  
-make reasonable efforts to ensure that all resident students are adequately informed about security procedures and rules, and how to react and seek aid if unauthorized person obtains access.
36. **Obtaining Emergency Aid in Student Housing**  
-ensure rapid and effective communication between student housing buildings and the security force.

The Campus Security Standards are based on CURRENT SECURITY PRACTICES AND POLICIES AMONG AICUM INSTITUTIONS, June 1984; a report prepared by the Community security standards Committee of the Association of Independent Colleges and Universities in Massachusetts. Summary prepared by Committee member, James A. True (Security Technology, Inc., Boston, Massachusetts)



## APPENDIX II

### ALLOCATION OF DAMAGES AMONG TORT-FEASORS

This is as an analysis of Section 15-108 of the New York General Obligations Law which sets forth New York's methodology for calculating the effect of a prior release or covenant not to sue in a personal injury action as it relates to the potential exposure of the non-settling tort-feasor.

In plain English, this is intended to explain the various possible effects that the settlement between Plaintiff and College Out for \$500,000.00 will have on any potential verdict rendered against College In.

The general rule is that a verdict against the non-settling tort-feasor, such as College In, will be reduced by the highest of the following sums:

1. The amount stipulated in the release of the settling tort-feasor (College Out); or
2. The consideration paid for the release of the settling tort-feasor; or
3. The settling tort-feasor's equitable share of damages as found by a jury.

Here are some examples which will shed a little light on this analysis:

1. Plaintiff and College Out settle for \$500,000.00. The jury in the lawsuit against College In (and others) returns the following:
  - a. Verdict \$1.5 Million;
  - b. Allocation of responsibility - 25% College In, 75% College Out
  - c. Result: \$1.5 Million verdict would be reduced by the highest of:
    - i. \$500,000.00, or
    - ii. Settling tort-feasor's equitable share, i.e. \$1,125,000.00 (\$1.5m x 75%).

In this example, College In's responsibility would be \$375,000.00.

2. Plaintiff and College Out settle for \$500,000.00
  - a. Subsequent jury verdict: \$1.5 Million
  - b. Allocation of responsibility - 75% College In, 25% College Out.
  - c. Result: \$1,500,000.00 would be reduced by the highest of:
    - i. \$500,000.00 or
    - ii. Settling tort-feasor's equitable share, i.e. \$375,000.00 (\$1.5m x 25%)





Thus in this example, a verdict against College In would be reduced to \$1,000,000.00 as opposed to \$1,125,000.00.

3. Plaintiff settles with College Out for \$500,000.00.
  - a. Subsequent verdict \$1.5 Million
  - b. Allocation of responsibility - 50% College In, 50% College Out.
  - c. Result: \$1,500,000.00 would be reduced by the highest of
    - i. \$500,000.00 or
    - ii. Settling tort-feasor's equitable share, which equals \$750,000.00.

Thus in this example, verdict against College In would be reduced to \$750,000.00

