EXPLAINING THE LEGAL DUTY
OF THE COLLEGE OR UNIVERSITY
TO MAKE REASONABLE
PROVISION FOR THE SAFETY
OF STUDENT INTERNS AND EXTERNS

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EXPLAINING THE LEGAL DUTY OF THE COLLEGE OR UNIVERSITY TO MAKE REASONABLE PROVISION FOR THE SAFETY OF STUDENT INTERNS AND EXTERNS

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"There is no reason why a university may act without regard to the consequences of its actions while every other legal entity is charged with acting as a reasonably prudent person would in like or similar circumstances."

- Nova Southeastern University v. Gross, 758 So.2d 86 (Fla. 2000).

Recent judicial decisions demonstrate the need to reconsider the affirmative duty of colleges and universities to include consideration of the issue of safety in their planning and supervision of student internships and externships. In a rapidly growing number of decisions, courts are demonstrating their increasing concern for student safety generally, and are more specifically explaining the scope of the university’s duty to act with reasonable care to prevent foreseeable risks to student safety. Indeed, the courts are quickly moving to define our relationships with students more consistently with traditional tort law concepts. The challenge to the college and university community – and its faculty who supervise internships or externships – is to identify workable legal approaches that will achieve the academic goals of specific internships and externships, without exposing students to unreasonable risks of physical or mental injury. This is not

1 B.A., University of South Florida; J.D. (with highest honors), Florida State University. Professor of Law, Stetson University College of Law. This paper is not intended to give legal advice. Administrators seeking
a difficult task, but it is one that requires faculty, academic administrators, and legal
counsel to acknowledge the institution’s duty to exercise reasonable care for the safety of
the student intern or extern, and to engage in collaborative efforts to design and
implement “experience-specific” protocols that include responses to safety issues.

At the outset, it must be emphasized that tort law concepts – as they are applied in
the context of so-called higher education law – do not view the college professor or
instructor ‘in loco parentis,’ or as having the same ‘supervisory’ responsibility as the
elementary or secondary school teacher. Suggestions that the application of tort law to
the professor-student relationship recreates ‘in loco parentis,’ or advocates a return to
some ‘olden time’ in higher education misstate postmodern tort jurisprudence and
mislead the administrator in ways which both compromise student safety and increase the
likelihood that the university will be subjected to civil liability for student injury.2

Simply put, state courts are increasingly reminding colleges and universities that their
strident denial that they have a duty to students as residents of the campus community,
and as learners, to exercise reasonable care under traditional tort law concepts, will likely
be rejected. Although the university’s relationship with its students is contractual, and
not in loco parentis – i.e., the courts continue to recognize students as adults under tort
law rules – principles of negligence law require the university to exercise reasonable care
in certain situations, precisely because of the relationship between the university and the
student.3 The relationship of instructor and student has been and continues to be the kind

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2 R. Bickel and P. Lake, “The Rights and Responsibilities of the Modern University: Who Assumes the
Risks of College Life?” (Carolina Academic Press, 1999).
3 This paper does not deal with the right of the private or public college or university to academically
dismiss a student for the failure to meet academic requirements, or the standard applied to the student’s
request for review of such decisions. See Storick v. Southeastern University of the Health Sciences, Inc.,
of relationship that imposes a duty where safety issues are inherent in the specific environment where the learning takes place. The concept is simple, morally right, and consistent with modern social policy views of the student-university relationship.

This said, some comforting limitations of the duty rule should be mentioned, or repeated, and later explained:

- The instructor is not the custodian of the student-intern. College students in internship settings are, under tort law concepts, responsible for their own comparative negligence and do, in many situations assume the obvious and inherent (or primary) risks of the activities in which they are engaged;

- The instructor is not the insurer of the student-intern's safety. The duty to exercise reasonable care does not impose strict liability based simply upon the student-instructor relationship. The institution is subject to liability only when the instructor fails to do what the reasonably prudent instructor would have done in planning and overseeing the internship;

- In many settings, the instructor's duty may be simply to warn (educate) the student-intern of nonobvious safety issues, such as concealed premises defects, or special circumstances which the student might otherwise not appreciate as creating an unreasonable risk to her safety;

- The student's disregard of safety procedures or instructions will, in most jurisdictions, defeat any claim by the student that the instructor or the institution is responsible for his injury — where the student's own conduct is, in fact, the significant contributing cause of the injury.

2000 WL 1055780 (Fla.App. 3 Dist., 2000), reaffirming that state and federal courts have historically distinguished between the judicial fact finding process and academic judgment regarding the performance of students, citing Board of Curators, Univ. of Missouri, 435 U.S. 78 (1978) (Determination of whether to dismiss a student for academic reasons based upon judgment that the student did not have the necessary clinical ability to perform adequately as a medical doctor requires expert evaluation and is not readily adapted to procedural tools of judicial or administrative decision making); Cf. Militare v. University of Miami, 236 So.2d 162 (Fla. App. 1970), and other cases, for the proposition that judicial review of a private educational institution's determination of academic performance is limited to whether the challenged determination was arbitrary and capricious, irrational, made in bad faith, or in violation of constitution or statute.
The application of these principles can be briefly explained, and the administrator can be adequately prepared to deal with tort law rules with minimum reference to the caselaw. The following few cases are treated as case studies, and are selected because they facilitate the further explanation of the principles that govern the shared responsibility of the instructor, and the student intern where safety issues are evident.

One of the seminal cases defining the nature and scope of the university’s responsibility to exercise reasonable care to prevent the creation of risks to students off campus was actually a field trip case: *Mintz v. State of New York.*[^4] I use the case in textbook fashion because it illustrates the fundamental relationship between duty and negligence – and how these elements of a negligence case bear on the issue of liability for personal injury – and because it fosters a positive view of negligence law. Indeed, even attorneys who disagree with the emerging scope of the university’s tort duty in nonacademic settings agree with the holding and rationale of *Mintz.*

In *Mintz,* the court dismissed a claim for damages against a university arising out of injuries sustained in an overnight, university-supported, extra-curricular canoe field trip.[^5] During the excursion, a sudden and severe storm blew in and two students were killed by drowning. Because the club was chartered by the university, the university was named as a defendant in the case. Although the university appeared to do no more than encourage the club’s activities, it did not claim that it had no responsibility for the safety of its students. Rather, the university’s argument was that the student deaths were accidental, and that it had not acted negligently in encouraging the activity. The court dismissed the civil action *not because there was no duty, but because all reasonable and*

[^5]: The outing was conducted by an intercollegiate club and took place on New York’s Lake George.
necessary precautions had been taken in planning and conducting the field trip. The court noted specifically that the club had conducted outings for ten years without significant incident and had taken many precautions on this particular occasion. Among the precautions, there was a motor boat escort, and there were experienced canoers on the trip. Canoes were equipped with lights, and the most experienced canoers were given the more responsible posts. Weather forecasts did not foretell in advance of any unreasonable threat to the safety of those planning the excursion, and all participants were adult students. The Mintz court did not hold that there was no duty to exercise reasonable care for the planned activities, but rather emphasized the fact that there was no negligent conduct on the part of anyone affiliated with the university that subjected the students to unreasonable risk of injury or death. The university avoided legal liability not because it had no responsibility to its students, but because the excursion was conducted responsibly: The court observed that “[it] was the terribly severe and unforeseen weather conditions...and not any negligence on the part of the university, which were the proximate cause of the [deaths].”

The traditional tort rules applied in the seminal field trip cases seem clearly applicable to the more formal academic experience characteristic of internships and externships. Indeed, colleges and universities have always insisted upon some contractual formality in their agreements with the hospitals, social services agencies, schools, businesses and other governmental agencies that provide internship experiences for students. Recent cases have, however, expressed concern that universities seem to be falling back on old, misguided ‘no-duty’ arguments, and need to be reminded that their
relationship with student interns and externs imposes a duty to provide appropriately for 
the student’s safety, through adequate instruction, and supervision.

The most recent case in point is the unanimous decision of the Florida Supreme 
Court in Nova Southeastern University v. Gross, 758 So.2d 86 (Fla. 2000). In the Gross 
decision, the Florida court considered the question “[whether] a university may be found 
liable in tort where it assigns a student to an internship site which it knows to be 
unreasonably dangerous but gives no warning, or inadequate warning, to the student and 
the student is subsequently injured while participating in the internship?” The court 
unanimously answered the certified question in the affirmative, holding that an adult 
student was owed a duty of reasonable care by the university regarding her safety in the 
context of her off campus internship.

The plaintiff moved from North Carolina to Ft. Lauderdale, Florida, when 
accepted into Nova’s doctoral program in psychology. As a part of the curriculum, she 
was required to complete an eleven month internship called a ‘practicum.’ Students were 
given a list of approved sites and could suggest six selections, but the university made the 
final selection and assigned students to a site. Plaintiff was assigned to Family Services 
Agency [FSA], located approximately fifteen minutes from the Nova campus. Plaintiff 
presented evidence during pretrial proceedings that the university had been made aware 
of criminal incidents at or near FSA’s parking lot – incidents which were unknown to her. 
While leaving the FSA facility in the evening, plaintiff was abducted by an assailant, 
robbed and sexually assaulted.

Nova resisted the student’s claims that it was responsible for her injuries, and 
moved to dismiss her lawsuit on the ground that it had no duty to her as a matter of law
because she was an adult and the university had no control over her actions. Citing Rupp v. Bryant, 417 So.2d 658 (1982), the university argued that the 'special relationship' supporting duty was limited to elementary and secondary schools and minor students.\(^6\) The Supreme Court observed that the relationship between the minor student and an elementary or secondary school derives from the *in loco parentis* doctrine, but held that a different relationship exists between the university and its adult student interns that supports a duty of care regarding student safety.

The court determined that because Nova "had control over the students" by requiring them to complete the practicum in question and assigning them to a specific location, it assumed the correlative duty of acting reasonably in making those assignments. Duty, the court stated, arises when the university acts in a way that creates a foreseeable zone of known risk to the student's safety.\(^7\) The court also pointed out that the duty did not arise from premises responsibility, but was related to the university's control over the student's instructional environment in a larger sense.

The court rejected the university's argument that it was absolved of any duty because Gross had an equivalent or superior knowledge of the conditions at FSA. This argument, the court held, is derived from premises liability concepts which were not the basis of plaintiff's claims. Rather, the court explained, Gross' claim alleged negligence on the part of Nova in requiring her to perform a mandatory practicum at an unreasonably dangerous location. Finally, the court held that the university's assertions that it had in

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\(^6\) 758 So.2d 86, at 88.

\(^7\) Citing McCain v. Florida Power Corp., 593 So.2d 500 (Fla. 1992), explaining foreseeability and duty. The court observed that it was not necessary to impose a general duty of supervision — as applied in the school law cases — to find that Nova had a duty to exercise reasonable care for the safety of interns completing mandatory assignments at facilities selected by the university. The court also underscored the district court's statement of the settled duty principle that, when one undertakes to act, there is an assumed duty to exercise reasonable care. 758 So.2d 86, at 88.
fact warned Gross of the dangerous conditions at FSA raised a dispute of fact related to
the issues of negligence and causation, properly assigned to the jury as factfinder.⁸

The issue of discretionary governmental immunity: The Gross case leaves
unanswered whether Florida’s tort claims law would permit a private tort action against a
public university on similar facts. The state’s tort claims law generally permits a private
tort action against an executive branch agency – including a university – where a duty
would exist under traditional tort law concepts. In other words, where the university
would be subject to civil liability were it a private entity, its governmental immunity is
waived. To illustrate, where the university operates student housing, it is subject to civil
liability to the extent that a private landlord would be liable under common law or
statutory tort rules (e.g., liability for negligent maintenance of common premises subject
to the exclusive control of the landlord).⁹

The issue of governmental immunity is more explicitly addressed in Bloss v.
University of Minnesota, 590 N.W.2d 661 (Minn. App. 1999). In Bloss, a student in the
University of Minnesota’s Spanish in Cuernavaca (Mexico) Program was assaulted by a
taxi driver after entering the front seat of his taxi for the purpose of obtaining
transportation from the home of her host family to a friend’s home. She sued the
University, alleging that it was negligent in failing to secure host housing closer to the
site of the academic program, failing to provide transportation to and from campus, and
failing to adequately warn students of the risk of assault.¹⁰ Applying a tort claim statute

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⁸ 758 So.2d 86, 90.
⁹ And see Rupp v. Bryant, supra., on the issue of governmental immunity, holding that a school district is
subject to a private tort action for injuries resulting from negligent supervision of students.
¹⁰ 590 N.W.2d 661, 663.
substantially similar to Florida’s,\textsuperscript{11} the court held that, to the extent that the student’s suit challenged the university’s use of host families to provide housing for the program, her claim was barred by principles of discretionary governmental immunity. Citing \textit{Nero v. Kansas State University}, 851 P.2d 768 (Kan. 1993), the court held that a public university’s decision to build, maintain, and operate housing is discretionary, and that the University of Minnesota’s decision to offer a cultural immersion program using host families requires a balancing of academic, financial, political, economic and social considerations that involve policy level concerns. However, the court was quick to note that where the challenged activity involves only safety considerations, rather than public policy, the rationale for governmental immunity does not apply. Thus, in \textit{Nero}, the university was held subject to liability in tort for breach of its duty as landlord to use reasonable care to protect tenants from foreseeable harm in its dormitory.\textsuperscript{12} The \textit{Bloss} court’s decision was explicitly based upon its finding that there was no allegation that the neighborhood to which plaintiff was assigned had a high crime rate, or that the university was aware of any prior sexual assault.

The \textit{Bloss} court implied that a public university has a duty to conduct a proper orientation for students enrolled in off campus residential programs, or study abroad, including warning students of risks known to the university and which might compromise the students’ safety. The court held that the university’s program materials, its release form, and student orientation materials all warned students about their safety — and specifically warned that women students should call for taxi’s at night, rather than hailing

\textsuperscript{11} Providing that a state university is generally liable for its torts under circumstances in which a private person would be liable. Minn. Stat. §§ 3.732-3.736.
\textsuperscript{12} 590 N.W.2d 661, 665. In \textit{Nero}, a university student was assigned to a coeducational residence hall. When he was indicted for allegedly assaulting a female resident in a common lounge of the hall, he was
a taxi on the street, and that they should never sit in the front seat of taxi's. The university's demonstration that it provided students with information about travel, safety and social issues underscored the court's finding that the university was not subject to liability for the student-plaintiff's injuries. The court's language clearly suggests that, had the plaintiff been able to support specific allegations of conduct on the part of the university that suggested negligence, her cause of action would have been recognized.\textsuperscript{13}

**Contractual and implied assumption of risks:** Under traditional tort principles, adult students assume the primary risks associated with internship or externship activities. Primary risks are those risks inherent in an activity which cannot be eliminated by the exercise of reasonable care.\textsuperscript{14} In *Regents of Univ. of California v. Roettgen*, 41 Cal. App. 4th 1082 (1996), a student was killed in a rock climbing class when rope anchors gave way. The court held that his instructors had a duty to use their expertise in securing the anchors, and a duty to insure that students would not attempt activities for which they were not properly prepared, or which were beyond their capabilities. However, if students are properly instructed and prepared, and anchors are properly set by the instructor, there is no liability for injury to a student because of the inevitable risk that he or she might fall.

Both contractual and implied assumption of risk rules are concerned with what is called 'secondary risk' — risks that are connected with duties of the university. As the *Bloss* case points out, the content of the university's program materials are critical to its apparent duty to adequately inform and warn students about nonobvious, unreasonable

\textsuperscript{13} 590 N.W.2d 661, 666.
risks to student safety. To avoid liability, the administrator and faculty member should insure (1) that students have a proper instructional foundation regarding safety issues for any internship or externship experience, and (2) that orientation materials, site protocols, consent forms, so-called releases, and other program documents properly inform students of risks known to the university, and which might not be known or appreciated by the student.\textsuperscript{15}

This paper intentionally avoids overloading the administrator and attorney with caselaw, because the university's duty regarding the safety of student learners in an internship or externship environment is uncomplicated: The straightforward observation of Justice Quince, on behalf of a unanimous state Supreme Court in \textit{Nova Southeastern University v. Gross} suggests simply that ‘no duty’ arguments are inappropriate where the safety of student interns and externs depends upon the university's acts or omissions. The issue of the university's duty to take reasonable precautions for the safety of student interns or externs does not derive from notions that the university stands \textit{in loco parentis}; rather, fundamental principles of contract and tort law impose a qualified duty to exercise reasonable care in these and other academic settings which place the student in environments that involve nonobvious risks to his or her safety. In the public sector, this duty is qualified by principles of discretionary governmental immunity – but even this special immunity is qualified and limited. Seeing law positively means recognizing and accepting the responsibility to insure that students are properly instructed for internship

\textsuperscript{14} Travel by train or ferry involves an increased risk of falling while walking from car to car, or descending stairs, because of the natural movement of the train or vessel.

\textsuperscript{15} The issue of ‘appreciation’ or risk is important to attorneys and administrators. It is easy to assume that if a student is informed about a risk, he or she will appreciate the possibility and seriousness of injury. This assumption should not be made; it is critical to the prevention of injury and avoidance of legal liability that students be made aware of the particular risks to their safety, and that they are given sufficient information or instruction so that they understand and appreciate these risks.
and externship experiences, and that orientation materials, consent and release
documents, contracts with receiving institutions or agencies, and other program
documents and materials include proper provision for risks to student safety, so that the
student is prepared to deal with those risks.

**CONCLUDING OBSERVATION** There is a practical lesson in the ‘legal’ benefit
of these approaches: No-duty arguments encourage carelessness or inattention by
administrators or faculty, invite risk of personal injury, and send the wrong message that
clinical academic experiences do not include attention to the safety of the learning
environment or learning experience.

If the university is careless or inattentive to safety issues in its internship or
externship protocols, and defends a negligence claim by arguing that it has no duty to the
student, a court’s rejection of the no-duty argument leaves the university subject to
liability *a fortiori*. However, as the treated cases illustrate, when the university exercises
reasonable care in addressing safety issues, it is more likely to discourage the filing of a
civil action and almost certainly will avoid liability.\(^\text{16}\) The real benefit of such positive or
proactive approaches, however, is the prevention of student injury and the message to
students, parents and courts that the college or university is genuinely interested in the
safety of its students.

\(^\text{16}\) A reading of most of the reported appellate decisions will reassure the administrator and attorney that,
where the college or university has taken reasonable steps to reduce the risk of student injury, it has
received legal judgement in its favor. The same cannot be said where the university ‘hangs its hat’ on the
assertion that it has no tort duty to an adult student who is involved in clinical or experiential learning.
NEW VIEWS OF THE RELATIONSHIP BETWEEN LEGAL COUNSEL AND THE ADMINISTRATOR

The increasing costs of litigation, new approaches to dispute resolution, and a growing concern for the lawyer’s role as counselor, have challenged legal counsel and administrators to redefine when and how they interact. This session will examine the recasting of the role of legal counsel.

Faculty:

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PROGRAM FACULTY

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Charles F. Carletta is Secretary of the Institute and General Counsel at Rensselaer Polytechnic Institute in Troy, New York. He is admitted to all of the courts of the State of New York, the United States Court of Military Appeals, and the Supreme Court of the United States of America. He is a nationally recognized speaker and writer on legal issues affecting colleges and universities. While in private practice, Mr. Carletta served as General Counsel to Rensselaer Polytechnic Institute, The Sage Colleges, The Albany College of Pharmacy, Hudson Valley Community College, and the Hudson-Mohawk Association of Colleges and Universities as well as special counsel to other private and public two and four year institutions of higher learning throughout the United States. Mr. Carletta maintains membership in the Association for Student Judicial Affairs, the National Association of College and University Attorneys, the International Association of Campus Law Enforcement Administrators, the College and University Personnel Association, and is affiliated with the National Association of College and University Business Officers. He has been a featured speaker for Region I of the National Association of Student Personnel Administrators, the New York Community College Vice Presidents for Student Services as well as the Northeast Association of College Auxiliary Services. He has served as Legislative Chairman and has published articles for the Association for Student Judicial Affairs and is the author of a chapter in the recently published book, THE ADMINISTRATION OF CAMPUS DISCIPLINE: Student, Organizational and Community Issues. He lectures nationally for several conferences and seminars Mr. Carletta has also helped design and broadcast a recent international live teleconference regarding crisis management on college campuses and has appeared in video productions related to college legal issues. He regularly authors a newspaper column on general legal issues for the Journal Register company. Although trained as a prosecutor and defense trial attorney, Mr. Carletta dedicates his time to college issues including administration, purchasing, government contracts, risk management, student affairs, public safety, and development. He has been honored for contributions to higher education by Stetson University College of Law, the Association for Student Judicial Affairs, and the Hudson-Mohawk Association of Colleges and Universities. Mr. Carletta received his B.A. from Manhattan College and his Juris Doctor from the Albany Law School of Union University.
Peter H. Ruger is General Counsel for Southern Illinois University. Previously, Mr. Ruger was General Counsel for Washington University from 1974 through 1992. From 1992 through 1996, he was a partner in the Peper, Martin, Jensen, Maichel and Hetlage firm, concentrating on education and health law issues. He is an Adjunct Professor at both the Southern Illinois University School of Law and the University of Missouri - St. Louis. Mr. Ruger received his B.A. from Denison University in 1963, his graduate degree in history from Washington University in 1966, and his J.D. from Washington University School of Law in 1969. Honors include Phi Beta Kappa; Board of Editors, Washington University Law Quarterly; and Omicron Delta Kappa. Mr. Ruger served as the President of the National Association of College and University Attorneys in 1989-90. He was the first recipient of the Thomas Biggs award, which is presented at the Stetson University College of Law Conference on Law and Higher Education. His publications include “The Practice and Profession of Higher Education Law,” 27 Stetson Law Review 175 (1997), and Accommodating Faculty and Staff With Psychological Disabilities, with Barbara A. Lee (National Association of College and University Attorneys, 1997). Mr. Ruger has spoken to numerous higher education and nonprofit groups and has been extensively involved in community activities in St. Louis and Southern Illinois.