Caires' Guide to Higher Education Case Law

"The case law and issues every student affairs professional should know, and love…"

Higher education institutions as custodians

***Gott v. Berea College*, 161 S.W. 204 (Ky. 1913) –** Established the In Loco Parentis doctrine

In this case, a nearby tavern owner brought a lawsuit against Berea College for having a policy that forbids students from eating or drinking in off-campus businesses. Clearly, the tavern owner stood to gain financially from the increased business that students would bring to his establishment. The court ruled in favor of Berea College, noting specifically that colleges "stand *in loco parentis* concerning the physical and moral welfare and mental training of the pupils, and … to that end [may make] any rule or regulation for the government or betterment of their pupils that a parent could for the same purpose" unless unlawful or contrary to public policy. The *Gott* case made it explicitly clear that a college was pretty much free to do as it pleased with its students (Bickel & Lake, 1999).

The Constitution comes to campus

***Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961)** – Established minimal due process for students as legal adults with Constitutional rights.

In *Dixon*, a pubic higher education institution attempted to expel students without offering any type of due process prior to their suspensions, such as prior notification or an opportunity for a disciplinary hearing. In this case, six black students at Alabama State College (ASC) were notified in a letter from the college President that they were expelled for participating in civil rights demonstrations that sought to desegregate a variety of public services. They were not told what specific misconduct they were charged with or for what reason they were expelled.

These students sought relief in federal court based upon a claim that their right to due process, as guaranteed by the 14th Amendment in the Constitution, was violated. This case made its way to the Fifth District Court, where this court held that students at public universities were entitled to at least fundamental due process. Notice and an opportunity for a judicial hearing for students were essential minimums prior to permanent expulsion. The court reasoned that education is so basic and vital in modern society that a public, tax-supported university cannot expel a student for alleged misconduct without meeting minimum constitutional due process requirements.

The *Dixon* case firmly established that students have the right to due process through prior notice and a hearing before being suspended or expelled at a public college or university. Through *Dixon*, the court ruled that, "the state, operating as an institution of higher education, may not infringe on the constitutional rights of students simply because they are students.

***Healy v. James*, 408 U.S. 169 (1972)** – Established the right for students to freely associate.

In *Healy v. James*, the Supreme Court ruled that a public university may not deny recognition to a student organization solely on the basis of its disagreement with the political

views of the organization, or its undifferentiated fear that recognition of the organization will lead to campus disruption. In *Healy*, a college president refused to recognize the proposed student group, "Students for a Democratic Society," in their petition for official university recognition. The president's refusal of recognition was on the mere threat that this group might disrupt the on-going educational mission of the institution, as the national SDS group had a history of disrupting university functions. The students involved with this group sued the president for his decision as a violation of their right to associate (1st amendment). As a result of *Healy*, the court established that students cannot be denied their constitutional right to associate with groups of their choosing as long as the group adheres to all germane college policies.

***Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) -** Established the right for students to freely express themselves

As a protest to the war in Vietnam, high school students (their parents, really) wore black armbands to school, an expressed violation of school policy. When the high school expelled these students for this violation, they (and their parents) brought forward a lawsuit. The Supreme Court ruled through *Tinker* that high school students cannot be denied their freedom of expression, as long as their expression does not disrupt the ongoing function of the educational institution. This decision therefore translated into the freedom of expression on the college campus.

***These revolutionary principles, that college students were legal adults with freedoms protected by the Constitution, was the beginning of a new era for the student-university relationship.

The bystander era

***Bradshaw v. Rawlings*, 612 F.2d 135 (3d Cir. 1979)** – Established that the university was not an insurer of student safety and does not owe a duty to protect students from harm.

In this case, an 18-year-old college sophomore, Donald Bradshaw, was injured as a result of an automobile accident that occurred on "dip" street. Bradshaw was riding as a passenger in the backseat of a vehicle driven by an intoxicated student, Bruce Rawlings, when they hit a parked car. Both Bradshaw and Rawlings were returning home from an off-campus sophomore class picnic after consuming copious amounts of beer. It is important to note that this was a university sponsored sophomore class event where most individuals were underage, even though the drinking age was 21 in Pennsylvania.

The picnic, a sophomore class annual event, was planned with a faculty advisor, who co-signed the check that was later used to buy beer by the sophomore class president. Flyers were posted all over campus advising the "wet" event with a full mug of beer on the poster as a logo. Commonsense standards would demonstrate that the university did everything wrong in this situation in providing alcohol to underage drinkers. Nevertheless, the court found that Bradshaw, now a quadriplegic, had no legal standing to bring a negligence lawsuit against the university. The court ruled that after the fall of *in loco parentis*, the university was not the insurer of student safety, nor did it owe the student any duty to protect him from harm.

***Beach v. University of Utah*, 726 P.2d 413 (Utah 1986)** – Ruled that students are adults and responsible for their own safety.

In this case, the Utah State Supreme Court dismissed the claim that the University was negligent for a drunk student falling off a cliff and becoming a quadriplegic during a geology class field trip, even though the faculty member in charge provided the alcohol to the victim. The *Beach* court claimed that it would be impossible for any college or university to "babysit" their students. Further, the *Beach* court claimed that it would be "inconsistent with the nature of the relationship between the student and the institution… and largely inconsistent with the objectives of a modern college education."

***Baldwin v. Zoradi*, 176 Cal Rptr. 809 (Cal. Ct. App. 1981)** –

The California Circuit Court of Appeals ruled by "only giving them responsibilities can students grow into responsible adulthood"

***Rabel v. Illinois Wesleyan University*, 514 N.E. 2d 552 (Ill. App. Ct. 1987) –** Furthered that a university is not an insurer of student safety.

The Illinois appellate court ruled that "it would be unrealistic to impose upon a university the additional role of custodian over its adult students and to charge it with the responsibility for assuring their safety and the safety of others (p. 561)."

Cross-current cases

***Mullins v. Pine Manor College*, 449 N.E.2d 331 (Mass. 1983) –** Established that colleges and university are required to adhere to fundamental safety practices of any other type of landlord.

In one of the most famous cases during the cross-current period, the Massachusetts Supreme Court acknowledged a university's duty to provide students with safe campus housing. In *Mullins*, a female student was attacked on campus by a non-student assailant. The assailant was able to gain access to the victim's residence hall room, even after several reports were made to the college that the lock on the door to the hall was in need or repair. The *Mullins* court ruled in favor of the plaintiff and established two important points: 1) a college has a duty to provide students access to safe housing; 2) that the campus must make reasonable attempts to prevent foreseeable harm.

Mullins led the way in establishing that a college or university could have a duty to protect students from foreseeable harm. Similar to laws requiring landlords to provide for the reasonable safety of their tenants, universities need to provide a similar level of protection for their students. This duty established *parity*, not *parenting*, for the way universities were to treat their students.

***Furek v. The University of Delaware*, 594 A.2d 506 (Del. 1991) –** Established that a higher education institution could be held responsible for misfeasance negligence for not acting *enough* to protect students.

In the late 1970s, physicians in the student health services department at the University of Delaware started to become aware of students who were injured in fraternity hazing pledging activities. The University responded by writing to their fraternities and by promptly admonished them for hazing. The Dean of Students issued a formal statement that fraternity hazing would not be permitted. Yet, hazing continued to occur on their campus. As the University worked to implement this new anti-hazing policy, a major communication breakdown occurred when the campus police were not properly instructed about this policy.

Jeffrey Furek pledged a fraternity at the outset of his enrollment at the University of Delaware. During his initiation into this fraternity, he entered "hell night" and a fraternity member poured oven cleaner over Furek while he was blindfolded. Furek was chemically burned and severally scarred. As a result, he brought a negligence suit against the fraternity, the University, and the individual member who pour oven cleaner over him.

The Supreme Court of Delaware ruled in favor of Furek and reasoned that since the university knew about hazing problems and created an anti-hazing policy in response to these problems, the university thus assumed sufficient control over fraternity hazing activities to create a duty of care. This ruling established several important findings: 1) the student-university relationship is unique and clearly more than just educational (a clear rejection of a fundamental finding in Bradshaw and Beach); 2) students are not solely responsible for their own safety simply because there were considered to be adults; 3) universities have a unique relationship with their students because of the high concentration of young people living in close proximity to the campus.

The Furek court held the University responsible for a student injury during a hazing incident. Several key legal precedents from this case noted above, however, have lasting implications on the legal student-university relationship regarding foreseeable student injury beyond hazing incidents. The Furek decision reflected changing societal attitudes towards hazing and suggested that colleges and universities are not free from responsibility to protect their students from foreseeable harm.

***University of Denver v. Whitlock*, 744 P.2d 54 (Colo. 1987) -**

Whitlock, a student at the University of Denver, brought a negligence claim against the University for failure to take reasonable measures to protect him from unsafe conditions while using a trampoline that was owned by the fraternity and located on fraternity property that was leased from the University. Whitlock was rendered quadriplegic after he broke his neck while attempting a one and three-quarter flip on the trampoline during a night-time fraternity party.

The jury in this case returned a verdict in favor of Whitlock and awarded him $5.26 million. The University moved for judgment notwithstanding the verdict, which the trial court granted holding that as a matter of law, no duty of care was owed to Whitlock from the University. Whitlock appealed this decision, and the Colorado Court of Appeals reversed the decision by the trial court and reinstated the jury award. The Court of Appeals stated that a duty was owed to Whitlock based upon two principles: 1) that an injury on a trampoline was foreseeable, and 2) the trampoline was located on property that was owed by the University.

In this case, the Colorado Supreme Court reversed the judgment of the court of appeals and remanded it to the original trial court for dismissal of Whitlock's complaint against the University. In an interesting move, this court rejected the court of appeals finding that the injury to Whitlock was foreseeable. Because Whitlock's claim was based upon nonfeasance negligence (failure to act), as opposed to misfeasance negligence (failure to act enough), the court ruled his injury was not foreseeable and therefore, there was no duty for the university to protect him. This decision set forward an important legal precedent that has made a lasting impact on how college and university administrators work with their students (Bickel & Lake, 1999).

*** It is important to note that the *Furek* court ruled against the University and found it responsible for misfeasance negligence for failure to prevent Furek's injury since the University took action to prevent hazing by implementing an anti-hazing policy but did not act enough to adequately implement this policy and prevent his injury. The *Whitlock* court, however, found in favor of the University because the University did not take any action whatsoever to prevent the trampoline accident. In *Whitlock*, no action equaled no foreseeability and therefore, no duty equaled no negligence. This decision was an ominous indication that colleges and universities could be held liable when they exercise a degree of supervision and proactive control in order to prevent student injury.

Other important legal "stuff" to consider

Establishing negligence

In order to establish liability in a court of law, a plaintiff must demonstrate that they have been a victim of negligence. Negligence is conduct falling below a legally established standard which results in injury to another person. Black's Law Dictionary (2004) defines negligence as "the failure to use such care as a reasonably prudent and careful person would use under similar circumstances (p. 1275)." To demonstrate that they are a victim of negligence, the plaintiff must assert and prove four elements, the fundamental building blocks for their claim, which include: 1) duty; 2) breach of duty; 3) causation; and 4) damage. If the plaintiff can prove all four elements, they have established a "prima facie" case of negligence.

Establishing the first element of negligence, duty, is often the most difficult element to prove for a student plaintiff who is suing a college or university for negligence. Establishing duty is a common issue in higher education case law, especially in disputes that involved alcohol abuse, hazing, suicide, and sexual assault. A variety of lawsuits that have been brought forward in the last 30 years involving student injury have been dismissed through summary judgment because the plaintiffs could not establish a duty for their institution to protect them for harm. Higher education institutions successfully avoided negligence claims during the 1970s and 1980s by debunking any notions of having a duty to protect students, thereby creating de facto legal immunity for colleges and universities.

Establishing a duty

Functionally restated, the factors that create a duty are:

1) foreseeability of harm/danger
2) seriousness of the harm

3) the closeness between the defendant's conduct and the injury produced
4) the moral blameworthiness of the defendants' conduct
5) the policy of preventing future harm
6) the burden on and consequences to the defendant and the community should a duty be imposed
7) the cost, availability, and prevalence of insurance, if any.

Most courts agree that when imposing duty, foreseeability is the most important factor. Generally, if the type of harm is foreseeable when a defendant misbehaves, there should be a duty owed to the victim to use reasonable care to prevent that type of harm; but if the type of harm is unforeseeable, strange, or bizarre, a presumption against duty would be appropriate.

Foreseeability

Several important lawsuits during the 1980s and 1990s have tested the foreseeability element in establishing duty. A few of these lawsuits challenged the notion that colleges and universities do not have a duty to protect students from foreseeable harm. As a result, these cross-current cases debunked many of the precepts that were established during the bystander era and added further uncertainty about the legal relationship between a university and their students.

Misfeasance vs. nonfeasance negligence

Nonfeasance negligence involves an allegation that the defendant failed to act in someway and damage occurred to the plaintiff. Misfeasance negligence is an allegation that the plaintiff acted in someway that caused damage to the plaintiff. The distinction is incredibly important. Higher education institutions have a track record of arguing that they are not responsible for negligence because they had no duty to act. Another successful legal argument has been that since they did not act, they are not responsible for negligence. Plaintiff claims of foreseeability to establish duty are challenging the "disengagement" theory.