Exceptions to No Duty & Theories of Liability

***Furek v. Delaware*, 594 A.2d 506, 509 (Del. 1991)**

Furek, a Sig Ep pledge, was seriously burned and permanently scarred when fraternity member poured oven cleaner over Furek's back and neck. Delaware Supreme Court found that university's policy on hazing and repeated warnings to students about the hazards of hazing "constituted an assumed duty" to protect students from injuries suffered as result of the hazing. Court rejected both Bradshaw court decision.

***Morrison v. Kappa Alpha Psi Fraternity*, 739 So. 2d 1105 (La. Ct. App. 1999)**

Morrison brought suit for hazing injuries caused by Kappa Alpha Psi chapter at Louisiana Tech in 1994. The trial court denied the state's motion for summary judgment on a duty theory, and the jury found for Kendrick. On appeal, the appellate court stated:

> [The Louisiana] legislature and universities have sought to reform a hazing tradition that has too often led to tragedy. As a matter of policy, hazing has been prohibited. This is rooted in an understanding that youthful college students may be willing to submit to physical and psychological pain, ridicule and humiliation in exchange for social acceptance which comes with membership in a fraternity.
>
> Under these circumstances, universities which allow and regulate fraternal organizations have a duty toward their students to act within reasonable bounds to protect against illegal and proscribed hazing.

The Court affirmed that the question was one of breach, or failure to exercise reasonable care in protecting those at risk, which turned on whether the university had actual or constructive knowledge and acted reasonably in light of such knowledge. The court then affirmed the jury's conclusion, after analyzing whether the university's response to previous allegations of hazing were adequate. The Court specifically discussed the University's failure to communicate the allegations to the Fraternity's national headquarters.

***Knoll v. Board of Regents of the State of Nebraska*, 601 N.W.2d 757 (Neb. 1999)**

Knoll was forcibly taken from campus building to FIJI house at University of Nebraska where Knoll was handcuffed to radiator and given 15 shots of brandy and whiskey and six cans of beer in 2 ½ hour period. Knoll became ill, was moved to 3rd floor bathroom, and was handcuffed to toilet pipe. Knoll attempted to escape and fell from 3rd floor window and suffered severe injuries. The FIJI house was owned by FIJI Corporation but UNL considered the facility a student housing unit.

The Nebraska Supreme Court determined that "the University owes a landowner-invitee duty to students to take reasonable steps to protect against foreseeable acts of hazing . . . And the harm that naturally flows there from."

***Haben v. Anderson*, 597 N.E.2d 655 (Ill. App. Ct. 1993)**

Haben, freshman at Western Illinois University, was a "rookie" on the Lacrosse Club team. During initiation of rookies, Haben and other rookies were forced to consume large quantities of alcohol, engage in strenuous physical activities, and submit to acts of ridicule and degradation including smearing their bodies, face and hair with food and other materials. Haben became intoxicated and lost consciousness.

Haben was found dead next morning. After the Trial Court dismissed the complaint against fellow lacrosse teammates, the Appellate Court determined that case was similar to *Quinn* and defendants owed Haben a duty to act reasonably to protect him and that it was reasonably foreseeable and likely that the injury could result from consuming large amounts of alcohol as part of the initiation ceremony.

***Coghlan v. Beta Theta Pi Fraternity*, 987 P.2d 300 (Idaho 1999)**
Coughlan was pledge of Alpha Phi at University of Idaho where she attended two fraternity parties (SAE/PKA and Beta Theta Pi) celebrating the end of pledge week. Two UI staff members were in attendance at second fraternity party (Beta Theta Pi) and spoke with Coughlan. Coughlan became intoxicated and distraught. She was led back to her sorority house and put to bed. Coughlin later fell from the 3rd floor fire escape causing permanent injuries. Coughlan sued the fraternities which sponsored the parties and the university. The Idaho Supreme Court concluded that the "University assumed a duty to exercise reasonable care to safeguard the underage plaintiff from the criminal acts of third persons, i.e. furnishing alcohol to underage students, of which University employees had knowledge."

***Ballou v. Sigma Nu General Fraternity*, 352 S.E.2d 488 (S.C. 1986)**
As part of Hell Night activities, Ballou and other Sigma Nu pledges were required to drink inordinate amounts of alcohol and other activities while encouraged and goaded by fraternity members. Ballou passed out and members were unable to wake him but left him lying face-down on couch overnight. Ballou was found dead next morning. Ballou's father sued Sigma Nu fraternity and its executive director. SC State Appellate Court found the fraternity owed a duty to care to initiates to prevent physical harm.

***Quinn v. Sigma Rho Chapter*, 507 N.E.2d 1193 (Ill. App. Ct. 1987)**
Fraternity pledge was required to participate in initiation ceremony in which he was directed to drink a 40-ounce pitcher of beer without letting the pitcher leave his lips or until he vomited. Later pledges were taken to tavern where they were directed to drink an 8-ounce bottle of whiskey and other drinks purchased by fraternity members. Quinn became extremely intoxicated and suffered neurological damage. Court determined that cause of action existed against the fraternity because case was distinguishable from social-host situation because Quinn was required to drink and there was a state statue against hazing that prohibited embarrassing or endangering through thoughtless or meaningless activity.

Title IX

Both of these cases are unreported opinions and the plaintiffs in both cases were unsuccessful. However, when hazing is gender based or sexually violent consider whether Title IX is applicable under current guidance.

***Clifford v. Regents of the University of California*, No. 2:11-CV-02935-JAM-GGH, 2012 WL 1565702 (E.D. Cal. April 30, 2012)**
An initiated member of Alpha Epsilon Pi brought suit against UC Davis and individual staff members alleging he was targeted for particularly offensive hazing as a non-jewish new member. Clifford alleged that among other hazing, chapter members drugged him and touched his genitals. He later resigned his membership and alleged continued harassment by fraternity members for 'breaking the code of silence' about the hazing. The case was dismissed with prejudice, in part because Clifford's continued association

with the chapter after the hazing discredited his claim of pervasive and ongoing harassment, and because he did not provide evidence that the University had any knowledge of sex based harassment.

D*oe v. Rutherford County, Tenn., Bd. Of Educ*., No. 3:13–CV–00328, 2014 WL 4080163 (M.D. Tenn. Aug. 18, 2014)

The parents of the Doe sisters, all minors, sued on behalf of their minor children for hazing they experienced by their high school basketball team. The parents asserted claims for discrimination and retaliation under Title IX claiming that the sexual nature of the hazing met the requirement that the harassment be severe, pervasive, and objectively offensive, that the school had actual knowledge, and by introducing evidence of harsher punishments in other similar situations claimed the show showed deliberate indifference. The school filed a motion to dismiss which was denied and the claim proceeded to trial. The jury found for the defendant on five of the six counts but awarded $1 for one of the claims of retaliation. Because the case involved minors the documents are sealed.

Duty and Other Legal Barriers to Recovery for Hazing Injuries

***Yost v. Wabash College*, 3 N.E.3d 509 (Ind. 2014)**

Yost, a freshman pledge of Phi Kappa Psi at Wabash College, was injured when an upperclassman member of the chapter, Cravens, placed him in a chokehold after showering him in cold water. Yost filed a personal injury action against Phi Kappa Psi National Fraternity, the local chapter, Wabash College, and Cravens. Wabash and the Fraternity defendants were granted summary judgment, and Yost appealed.

The Indiana Supreme Court held that Wabash and Phi Kappa Psi National Fraternity did not have a duty to protect Yost from hazing regardless of the lease between the College and the chapter, and that neither party could be held vicariously liable for negligent acts of the local chapter during the incident. Yost argued that Wabash's enforcement of a "strict policy against hazing" inferred a duty to protect. The Court held that Wabash's policies and education on hazing did not create a special relationship. The Court stated that colleges should be encouraged to provide hazing prevention education and policies and to impose liability on these facts would disincentive such work. The national fraternity successfully argued that it did not have the power to control the conduct of the local chapter or its members. Yost's negligence claim and vicarious liability claims also failed because no duty was found for either the Fraternity or the college. Because the case centered on legal issues, the Court did not determine if the incident that caused Yost's injuries constituted hazing. (The Court did however reverse summary judgment for the local chapter.)

***Smith v. Delta Tau Delta*, 9 N.E. 3d 154 (Ind. 2014)**

Parents of Johnny Smith, a Wabash freshman pledging Delta Tau Delta, brought a wrongful death action against the national fraternity, the local chapter, the college, and two students. The national fraternity was granted summary judgment and the parents appealed. Portions of the judgment were reversed and remanded. Delta Tau Delta appealed and the Supreme Court of Indiana vacated, finding the national fraternity was not liable for Smith's death on either an assumed-duty theory or a vicarious liability theory. The court found that the national organization does not assume a duty of care to protect pledging students against hazing or excessive alcohol consumption. However, the court did affirm that the Fraternity must act with a reasonable duty of care in any duties it performs.

***Rabel v. Illinois Wesleyan University*, 514 N.E.2d 552 (Ill. App. Ct. 1987)**
Rabel was called from her dorm room by a member of Phi Gamma Delta (Fiji) fraternity at IWU. A Fiji member grabbed Rabel and threw her over his shoulder. As he ran toward gauntlet of fraternity brothers, he tripped and fell, dropping Rabel. Rabel suffered a skull fracture and brain concussion among other injuries. The Court held:

> "We do not believe that the university, by its handbook, regulations, or policies voluntarily assumed or placed itself in a custodial relationship with its students, for purposes of imposing a duty to protect its students from the injury occasioned here . . . 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."

***Pelham v. Board of Regents of University System of Georgia*, 321 Ga.App 791 (2013)**
Pelham, a student at Georgia Southern, brought suit against the Board of Regents for injuries he sustained when his football coach required young players to 'fight' larger, starting players to determine who would earn a spot on the team. Pelham claimed that the fight was in violation of Georgia's anti-hazing laws and that the Board of Regents should be held liable for his injuries based on the negligent training and supervision of the coach and the coaching staff, and under the theory of respondeat superior, that the employer should be responsible for the employee's actions. The dismissal of the complaint was affirmed on appeal. The Georgia Court of Appeals held that the anti-hazing law did not create a waiver to the Board's sovereign immunity.

***Alton v. Texas A&M University*, 168 F.3d 196 (5th Cir. 1999)**
Alton, a member of FISH Drill Team, was beaten on nightly basis during hell week but the beating were not reported to University officials. He was beaten again 3 weeks later for "botching drill movement." Alton did not tell University administrators, but told a brother who told the parents. The parents contacted an administrator in Corps of Cadets and requested an investigation. The team's faculty advisor questioned Alton, and Alton denied incidents had occurred. Alton then suffered another beating and was told to cut self with knife, which he did. Parents then met with Commandant of Corps of Cadets. Commandant suspended 9 cadets and ordered them of out of Corps facilities. Alton filed a complaint in federal court alleging that he was deprived of his constitutional rights, and naming in his commandant, former commandant, Vice President and faculty advisor. The Court granted summary judgment on the grounds of qualified immunity. Alton appealed. The Fifth Circuit Court held that "supervisory officers, like the defendants, cannot be held liable under § 1983 for actions of subordinates, like the cadets, on any theory of vicarious liability." In order for liability to attach, Alton had to show that the officials acted with deliberate indifference. Criminal charges were brought against the individual students.

Recent High-Profile Settlements and Jury Verdicts

- Gary DeVercelly, Phi Kappa Tau at Rider
- Robert Champion, Florida A&M Marching Band
- Chun Deng, Pi Delta Psi at Baruch
- Tucker Hipps, Sigma Phi Epsilon at Clemson
- Brett Griffin, Sigma Alpha Mu Fraternity at Delaware