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It's All Fun and Games Until Someone Loses an Eye: An Analysis of University Liability for Actions of Student Organizations

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It's All Fun and Games Until Someone Loses an Eye: An Analysis of University Liability for Actions of Student Organizations

I. INTRODUCTION

In May of 1993, criminal charges were filed against twenty-four members of the University of Maryland's College Park branch of Omega Psi Phi for hazing six pledges.[1] The pledges were allegedly "kicked, punched, spat upon, drizzled with hot wax, and struck with wooden paddles."[2] The pledges were also "forced to eat vomit, drink from toilets, exercise to the point of exhaustion, and do homework and buy meals for the brothers."[3] The injuries suffered by the pledges ranged from a stress-related stomach disorder to a ruptured spleen and a collapsed lung.[4] In response to this incident, the University of Maryland banned the Omega Psi Phi chapter from the College Park Campus for five years.[5]

The University of Maryland is not the only university[6] recently confronted with this type of situation,[7] nor is Maryland the only state at-

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1. Lisa Leff, *24 Students at U-Md. Charged With Hazing: Police Say Six Fraternity Pledges Were Kicked, Beaten*, WASH. POST, May 27, 1993, at C3.

2. Lisa Leff, *U-Md. College Park Bans Social Fraternity*, WASH. POST, Oct. 23, 1993, at B1.

3. *Id.*

4. *See* Leff, *supra* note 1, at C3; Leff, *supra* note 2, at B1. Injuries included a broken ankle, a concussion, a ruptured eardrum, and a cracked rib. Leff, *supra* note 2, at B1.

5. Leff, *supra* note 2, at B1.

6. For purposes of this Comment, the term "university" refers to both universities and colleges, encompassing both public and private institutions.

7. Leff, *supra* note 2, at B1. From 1973 to 1993, approximately 20 Maryland fraternities were suspended for illegal or disruptive actions. *Id.* In Louisiana, a Southern University student was blinded during fraternity hazing after receiving a blow to the head with a frying pan. *Hazards of Hazing*, CHI. TRIB., Feb. 16, 1993, at N15. California University of Pennsylvania suspended its Phi Beta Sigma chapter due to alleged hazing. *Frat Chapter Booted for Touch Pushups*, PLAIN DEALER, Apr. 11, 1993, at 8A. At Gallaudet University, a school for the deaf, the Kappa Gamma fraternity forced a pledge to stand in a room for several hours without moving; as a result, the pledge

tempting to prevent these problems through legislation.[8] While causing countless injuries, hazing incidents are also responsible for the deaths of many college students across the country.[9] Universities have responded to these deaths and injuries with anti-hazing policies and fraternity prohibitions.[10] In part, the university's fear of being held liable for these injuries generates this response.[11] To avoid liability, universities must be willing to shut the campus doors to violating organizations.

The tension surrounding university liability for student group action extends beyond the fraternity context. Universities also face liability for student injuries sustained during participation in any student organization recognized by the university.[12] Therefore, in order for a universi-

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collapsed unconscious. David Grogan, *Their Brothers' Keepers?*, PEOPLE, May 24, 1993, at 65.

8. *See* Susan J. Curry, Comment, *Hazing and the "Rush" Toward Reform: Responses From Universities, Fraternities, State Legislatures, and the Courts*, 16 J.C. & U.L. 93 (1989) (discussing hazing and its effect on universities, national fraternal organizations, and the state). In response to the numerous injuries caused by hazing, 25 states have adopted anti-hazing legislation designed to eliminate the practice altogether. Darryll M. Halcomb Lewis, *The Criminalization of Fraternity, Non-Fraternity and Non-Collegiate Hazing*, 61 MISS. L.J. 111, 120 (1991). While most hazing legislation classifies hazing as a misdemeanor, four states have indicated that certain forms may constitute a felony. *Id.* at 121.

9. Curry, *supra* note 8, at 93. In 1986, a study concluded that hazing resulted in as many as 39 deaths in a seven year period, along with many serious injuries. *Id.* at 94 n.5 (citing N.Y. TIMES, Apr. 1, 1986, at C10). Another study reported 51 hazing deaths between 1977 and 1987. *Id.* (citing LANSING ST. J., Oct. 7, 1988, at 1A).

10. Curry, *supra* note 8, at 93. The University of Miami mandates that its fraternity rush period be alcohol-free. Frank Cerabino, *Frats Tap Minds, Not Kegs During Rush*, MIAMI HERALD, Sept. 6, 1987, at 1B. After its fraternities rejected university laws regarding anti-hazing rites, Gustavus Adolphus College withdrew recognition of all fraternities, prohibited fraternity meetings on campus, and denied fraternal access to college funds and alumni mailing lists. Debbie Goldberg, *Crack Down on Hazing and Alcohol: New Rules for Fraternities and Sororities*, WASH. POST, Aug. 7, 1988, at 05. Other universities, including Franklin & Marshall, Colby, Williams and Amherst, have followed the route taken by Gustavus Adolphus by banning all fraternal organizations from campus. *Id.*

11. Curry, *supra* note 8, at 94. Although fraternities have existed for many years, recent cases holding universities liable for hazing related injuries have forced universities to reconsider their relationship with fraternal organizations. *See* Ralph S. Rumsey, *Legal Aspects of the Relationship between Fraternities and Public Institutions of Higher Education: Freedom of Association and Ability to Prohibit Campus Presence of Student Membership*, 11 J.C. & U.L. 465 (1985) (discussing the emergence of fraternities and sororities in the United States). "'Institutions are starting to take a very long look at their relationship with fraternities and sororities.'" Goldberg, *supra* note 10, at 05 (quoting Sheldon Steinbach, general counsel for the American Council on Education, a research and lobbying group representing most of the nation's universities).

12. *See generally* Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir. 1979) (involving

ty to avoid liability, it must deny recognition to any organization for which it may face liability.

Consider the effect of such a policy. What would the college experience be like without fraternities and sororities?[13] Without intramural athletics?[14] Without the student press or student government?[15] Students often take for granted the existence of these organizations on a college campus. In response to recent cases holding universities liable for actions of these organizations, universities are now in a position where they must determine whether the benefits associated with these groups outweigh the risk of liability. The fate of these organizations, and ultimately the fate of the college experience, depends on how the university answers this question.

Part II of this Comment discusses the benefits of student organizations to both the university and the student.[16] Part III traces the history

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student who sued university for injuries sustained in car accident occurring during return from sophomore class picnic), *cert. denied*, 446 U.S. 909 (1980); Furek v. University of Del., 594 A.2d 506 (Del. 1991) (discussing student who sued university for injuries sustained during fraternity "Hell" week); University of Denver v. Whitlock, 744 P.2d 54 (Colo. 1987) (involving student who sued university for injuries sustained while jumping on a trampoline); Beach v. University of Utah, 726 P.2d 413 (Utah 1986) (involving student who sued university for injuries sustained during class field trip); University of S. Fla. Student Gov't v. Trundle, 336 So. 2d 488 (Fla. Dist. Ct. App. 1976) (involving student injured during self-defense class sponsored by student government), *cert. denied*, 348 So. 2d 954 (Fla. 1977); Campbell v. Board of Trustees of Wabash College, 495 N.E.2d 227 (Ind. Ct. App. 1986) (concerning student who brought an action against university for injuries sustained as a passenger in accident involving automobile driven by fraternity member); Henig v. Hofstra Univ., 160 A.D.2d 761 (N.Y. App. Div. 1990) (involving student who sued university for injuries sustained during an intramural football game); Lamphear v. State, 91 A.D.2d 791 (N.Y. App. Div. 1982) (involving member of women's varsity softball team who brought an action for injuries sustained while sliding into third base); Mintz v. State, 47 A.D.2d 570 (N.Y. App. Div. 1975) (concerning action brought against university for the deaths of two college students who drowned in a fierce and unexpected storm while participating in an overnight canoe outing).

13. For a discussion of the importance of fraternal organizations to the college campus, see *infra* notes 25-38 and accompanying text. *See also* Debbie Goldberg, *Local Fraternities*, WASH. POST, Aug. 7, 1988, at 05 (discussing the positive aspects of fraternities and sororities to the college community).

14. For a discussion of the importance of intramural athletics, see *infra* notes 39-43 and accompanying text.

15. For a discussion of the importance of these activities to the student and the collegiate experience, see *infra* notes 44-48 and accompanying text.

16. *See infra* notes 21-61 and accompanying text.

of university liability for actions of these groups.[17] Part IV presents two approaches a university may take to limit its potential liability.[18] Part IV also discusses the advantages and disadvantages of these approaches.[19] This Comment concludes that because a university can recognize and support student organizations while simultaneously limiting liability, such an approach should be adopted to further the mission of college educators.[20]

II. BENEFITS OF STUDENT ORGANIZATIONS TO STUDENTS

Extracurricular activities significantly affect the emotional, social, moral, physical and mental development of college students.[21] Students rely on these activities as an essential part of their college experience and seriously consider the activities offered by specific universities when selecting a college.[22] In turn, universities now rely on these activities and organizations to supplement the classroom experience and to provide students with an extracurricular education.[23]

Although the phrase "student groups" encompasses many different types of organizations,[24] the benefits provided by the groups are similar

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17. *See infra* notes 62-145 and accompanying text.

18. *See infra* notes 146-213 and accompanying text.

19. *See infra* notes 171-83 and 209-13 and accompanying text.

20. *See infra* notes 214-19 and accompanying text.

21. Tia Miyamoto, *Liability of Colleges and Universities for Injuries During Extracurricular Activities*, 15 J.C. & U.L. 149, 149 (1988). The specific areas of development include "(1) group dynamic skills (e.g., leadership skills); (2) decision making skills; (3) organizational and administrative skills; (4) budgeting and accounting skills; (5) bureaucratic skills; and (6) programming skills." *Id.* at 149-50.

22. *See, e.g., id.* at 149.

> "From its earliest beginnings, American higher education has been concerned with more than intellectual development. College has been more than merely the curriculum; the mission of college has been education, and education has come in many forms—outside of class as well as inside . . . . Even students who are enrolled full-time spend only a few hours a week in the classroom, while spending the majority of their time in other pursuits . . . . Extracurricular activities offer students an opportunity simply to have fun, and to develop outside interests that can be enjoyed throughout life."

Id. (citations omitted).

23. *Id.*; *see also* Goldberg, *supra* note 13, at 05 (stating that the dean of students at George Washington University approves of the social aspects provided by Greek organizations).

24. For the purposes of this Comment, the phrase "student groups" encompasses all organizations, groups, clubs, and activities associated with the university including, but not limited to, athletic clubs (both varsity and intramural), political clubs, social clubs, religious clubs, sororities, fraternities, student newspapers and other publications, theater groups, volunteer groups, student government, and alcohol support groups.

and may be illustrated through a discussion of only a few. This Comment details the benefits provided by fraternities and sororities, intramural athletics and student government.

A. Fraternities and Sororities

At those universities which support fraternal organizations, sororities and fraternities [hereinafter fraternities] are often the most influential organizations in student life.[25] Students often live in fraternity houses, socialize with a limited group defined by the fraternities, and become involved in those activities supported by their fraternities.[26] Because fraternities essentially consume student life outside of the classroom, they play a large role in a student's collegiate development.[27]

Students join fraternities for many different reasons. Some join fraternities for the social atmosphere.[28] Others join them to meet different

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25. *See generally* Eugene D. Gulland and Majorie E. Powell, *Colleges, Fraternities and Sororities: A White Paper on Tort Liability Issues*, COVINGTON AND BURLINGTON, May 1989, at 1. Describing the struggle a university faces in defining and managing fraternities, Gulland and Powell state:

> They are a part of the life of the college community, yet they claim to be independent entities encouraging students to learn responsibility and citizenship by governing themselves. Fraternities and sororities are often accused of fostering cliques and promoting discipline problems, but at the same time they frequently spark school spirit and encourage commitment to high ideals. While fraternities and sororities exasperate many deans, their members are often among the most devoted and generously contributing alumni(ae). And many schools depend on fraternities and sororities to house and feed large numbers of their students. Whether they are regarded as an asset, a necessary evil or a persistent aggravation, fraternities and sororities are firmly rooted in many university communities.

Id.

26. *Id.* In fact, the popularity of fraternities allows colleges to put less effort and resources into creating a social environment on campus for the students. Goldberg, *supra* note 10, at 05. Conversely, when Amherst College eliminated the Greek system from its campus, it built a student center to create a social outlet for its students. *Id.*

27. *See generally* Gulland & Powell, *supra* note 25, at 1.

28. *See* Jason DeParle, *About Men; About Cold Beer, Willing Women, Hazing, Conformity—About Fraternities*, WASH. MONTHLY, Nov. 1988, at 38 (discussing why students choose to join fraternities). Describing why he chose to join a fraternity, DeParle stated, "I liked the parties . . . . Given their numbers, fraternities also seemed like the only thing. Just about half the campus was Greek, but to my freshman eye the other half, scattered and less howling, seemed invisible." *Id.*; *see also* Goldberg, *supra* note 10, at 05 (stating that a large part of the appeal of fraternities

people, to get involved in a collegiate organization, to assume leadership roles, and to make lifelong friends and professional contacts.[29] Whatever the reason, hundreds of thousands of students choose to join fraternities.[30]

Fraternities also benefit the university by providing an avenue through which students can grow and gain extracurricular experience.[31] Fraternities provide a social atmosphere which encourages social growth.[32] Students learn how to live together and how to work together.[33] Because most fraternities are run by the members themselves, students quickly assume leadership roles while learning how to govern themselves and how to work with those governing them.[34]

Additionally, fraternities are often active in the community surrounding the university.[35] Students, therefore, must become a part of the community in which they live. Through this community service work, not only do the students provide needed community service, but the students also gain practical experience.[36]

Finally, fraternities comprise a lifelong brotherhood, and as such, they provide a foundation upon which students can rely once they graduate from college.[37] Further, fraternity members are generally among

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is "access to a better social life").

29. Goldberg, *supra* note 13, at 05. In describing the opportunities provided by fraternities, Gail Hanson, dean of students at George Washington University, said that fraternities offer students a "chance for close friendships on an urban campus, with a smaller group of people who share your interests and are a little bit like you." *Id.* Beth Saul, chairperson of the National Panhellenic Conference, stated that students join fraternities because of the career and networking potential. *Id.*

30. In 1988, fraternities had over 400,000 members. *Id.* Six-hundred fifty college campuses house more than 7500 fraternity and sorority chapters. Gulland & Powell, *supra* note 25, at 1.

31. *Id.* at 1.

32. *Id.*; *see also* DeParle, *supra* note 28, at 10 (discussing social outlets provided by fraternities).

33. Gulland & Powell, *supra* note 25, at 1.

34. *Id.*

35. *See* Goldberg, *supra* note 13, at 05. Many fraternity chapters sponsor events to raise money for campuses, communities, and philanthropies. *Id.*

36. The Lambda Chi Alpha chapter at the University of California at Santa Barbara sponsors a women's volleyball tournament every year, the proceeds of which they donate to charity. Interview with Richard Hull, Co-Director of 1992 Inter-Sorority Volleyball Tournament, Santa Barbara Lamda Chi Alpha Chapter, January 10, 1994. The tournament consists of approximately 2,000 participants and 20,000 spectators. *Id.* The fraternity members, among other things, solicit and organize the participants, secure an area where the tournament can be held, provide security, solicit advertisers, and prepare a tournament program. *Id.* These tasks require not only constant public contact but also a firm grasp of basic business principles. *Id.*

37. *See* Goldberg, *supra* note 10, at 05 (stating that students benefit from possible career and networking opportunities provided by fraternities).

the most generous alumni, and universities have come to rely on them for financial support.[38]

B. Intramural Athletics

Another activity through which students and universities benefit is intramural athletic programs, common to most universities.[39] Few people who played high school sports are able to play varsity athletics at the collegiate level.[40] Therefore, intramural athletics provide a great activity for those students who wish to continue to play competitive sports during their collegiate years, but not at the varsity level.[41] These students are able to take a break from class, get physical exercise, and compete with friends.[42] The university is able to provide a program

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38. *See* Gulland & Powell, *supra* note 25, at 1. *See also* Goldberg, *supra* note 10, at 05.

> After they graduate, fraternity and sorority members tend to be active alumni and generous campus supporters—and there are some 6.85 million Greek alumni nationwide. A study at the University of Indiana found that 56 percent of alumni who gave gifts of more than $100 were fraternity members, although they made up only 12 percent of total alumni. Richard McKaig, executive secretary of the Center for the Study of the College Fraternity, said other research indicates these generous giving patterns are true in general for fraternity members.

Id.

39. For example, Pepperdine University offers many sports through its intramural athletics program including softball, touch football, and basketball. PEPPERDINE UNIVERSITY SEAVER COLLEGE CATALOGUE, 1993-94, at 20.

40. *See* Frank Deford, *A Heavenly Game?*, SPORTS ILLUSTRATED, Mar. 3, 1986, at 58. Only eight percent of the 11,000 students at Villanova University participate in varsity athletics. *Id.*

41. *Id.* More than 50% of the Villanova student body participates in intramural athletics. *Id.*

42. In describing the Office of Intramurals and Recreation, Pepperdine University's Catalogue states:

> The Office of Intramurals and Recreation is dedicated to the basic philosophy that every Seaver College student should have the opportunity to participate in wholesome and rewarding leisure pursuits. This office provides a wide variety of programs which include athletic participation and competition, physical fitness, and the development of individual creativity. An emphasis is placed on lifelong, carry-over sports activities, with the ultimate goal of providing "something for everyone."

PEPPERDINE UNIVERSITY SEAVER COLLEGE CATALOGUE, 1993-94, at 20.

through which its students develop their physical health, enhance their social atmosphere, and partake in healthy competition.[43]

C. *Student Government*

The final example of a mutually beneficial student organization is student government,[44] benefitting both the students participating in the organization as well as the other students attending the university.[45] Students join student government to gain political experience, to have a voice in campus decisions, and to become part of a group.[46] These students benefit through learning about the political process, dealing with the university on a decision making level, and serving and representing fellow students.[47] The student government benefits the other students because it links the students to the administrators and grants the students a voice in administrative decisions.[48] The student body also benefits from the many activities and social events sponsored by the student government. The university benefits because it is able to provide an activity through which students can gain practical political experience.

Student groups benefit both the individual student and the university. Students benefit not only by realizing the initial goals which prompted them to join the organization, but also by developing skills through participation in the organization. The university benefits because it is able to further the education of its students beyond the limits imposed by the classroom.

D. *Risks Associated With Student Groups*

Although student groups benefit universities, the risk of liability for injuries caused by participation in these group activities creates an unavoidable tension between universities and their student organiza-

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43. *Id.*

44. For purposes of this Comment, the term "student government" includes all forms of government on campus from the government of the student body to the government of individual residence halls.

45. *See, e.g.*, PEPPERDINE UNIVERSITY SEAVER COLLEGE CATALOGUE, 1993-94, at 21 "The student body of Seaver College plays an active and important role in the college community." The student government is composed of all students registered at Seaver College. *Id.*

46. *Id.* "The [Student Government A]ssociation is designed to give Seaver students a collective voice in college affairs and to provide a means for students to serve fellow students and the local community." *Id.*

47. *Id.* "Students and faculty cooperate in dealing with problems of campus community concern, and student representatives serve on a number of official college committees." *Id.*

48. *Id.*

tions.[49] Although universities want to encourage development of student participation in these groups, such encouragement may lead to university liability for subsequent injuries sustained as a result of actions relating to student organizations.[50] The risks associated with university recognition and acceptance of these groups force the university to carefully consider its role in and with the organizations.[51] Problems of the organization often become problems of the university, and the student frequently names the university as a defendant when he or she is harmed during participation in an organizational activity.[52]

Plaintiffs as well as commentators often argue that universities should be held liable for these injuries.[53] Parents and students rely on universities for protection.[54] Universities often provide security guards throughout campus and in dormitories. Gates often deny campus access

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49. Curry, *supra* note 8, at 94. "The relationship between fraternities and institutions of higher education has spawned a series of complex legal issues, ranging from zoning disputes to fraternity bannings . . . . Indeed, the tension between fraternities and their host institutions escalates as the university finds itself potentially liable for the misconduct of fraternities and their members." *Id.* (citations omitted).

50. *Id. See also* Furek v. University of Del., 594 A.2d 506, 519-20 (Del. 1991) (holding university liable for injuries sustained by student participating in fraternal activities when the university actively encouraged participation in fraternities).

51. Curry, *supra* note 8, at 93.

52. Hazing is the type of activity which carries potential liability for all involved, including national fraternal organizations, local fraternal chapters, university administrators, individual students, and the university itself. Curry, *supra* note 8, at 94. *See generally* University of Denver v. Whitlock, 744 P.2d 54 (Colo. 1987) (involving lawsuit by student who was injured when using a trampoline located on the front lawn of his fraternity house); *Furek*, 594 A.2d at 506 (involving lawsuit against university by college student who was burned and permanently disfigured during fraternity Hell week); Henig v. Hofstra Univ., 160 A.D.2d 761 (N.Y. App. Div. 1990) (involving student who sued the university for injuries sustained during an intramural football game).

53. *See* Gulland & Powell, *supra* note 25, at 4-5. Sympathy for a plaintiff's serious injury may trigger the search for a "deep pocket" to adequately compensate the plaintiff. *Id.*

54. Miyamoto, *supra* note 21, at 152.

> Courts have largely disregarded the fact that the college/university-student relationship is a unique one. The institution is often the center of the student's life—in addition to classroom education, the institution may provide a place for the student to live and may be the site of many if not all of the student's extracurricular activities. Given this relationship, it is not unreasonable for students to assume that institutions will regulate extracurricular activities so as to protect participants from unreasonable risk of harm.

Id. at 151-52.

to unauthorized persons. Universities commonly have rules regarding drinking, hazing, and other potentially dangerous activities. These common university precautions convey a message to parents and students that the university is not merely an educator but also an active participant in the lives and safety of its students.[55] Arguably, imposing liability on universities will ensure that universities actually carry out their implicit promise to parents to protect the students.[56]

Furthermore, regardless of whether the university retains liability for these injuries, students will continue to be injured as a result of participation in student organizations.[57] Student organizations, however, may have inadequate funding or insurance to compensate students for their injuries.[58] It may, therefore, be argued that the university should be held liable to ensure the student full compensation for his or her injuries.[59]

Conversely, there are many arguments against holding universities liable for these injuries. First, such a policy may encourage student organizations to shirk responsibility for their actions. If an organization knows that the university will ultimately bear responsibility for any injuries sustained during extracurricular activities, the organization may be less likely to rigorously regulate its activities. Furthermore, because the university may be removed from the activity, control over the activity may be minimal and injuries may be more likely to occur. Secondly, such a liability policy may force universities to limit the number of organizations they allow to exist at the university.[60] Many universities are in a financial crisis and cannot afford the risk of being held liable for these injuries.[61] Therefore, holding universities liable may cause the demise of student organizations, and universities and students alike will suffer the consequences.

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55. *Id.*

56. *Id.* at 172. For a discussion of the imposition of such liability on universities, see *infra* notes 65-97 and accompanying text detailing the doctrine of *in loco parentis*.

57. Miyamoto, *supra* note 21, at 149. "The benefits that a student receives from participation in extracurricular activities do not come without certain costs. These costs include the risk of sustaining injury while participating in such events." *Id.*

58. Gulland & Powell, *supra* note 25, at 4-5.

59. *Id.* at 4.

60. *See, e.g.*, Goldberg, *supra* note 10, at 05. Fearing liability when activities of Greek groups supported or recognized by the university injure students, Franklin & Marshall, Williams, Amherst and Colby colleges have all banned fraternities and sororities from their campuses. *Id.*

61. Public universities in particular are experiencing a serious financial crisis. All over the country education budgets are decreasing, forcing public universities to re-evaluate their programs.

What, then, can universities do to preserve student organizations, and how can they avoid liability? Before discussing the ways in which a university may avoid liability, it is necessary to discuss liability itself and the theories upon which university liability may be founded.

III. THEORIES UPON WHICH UNIVERSITY LIABILITY MAY BE FOUNDED

Plaintiffs most frequently utilize a negligence theory for recovery for injuries sustained as a result of participation in student organizations.[62] To establish negligence, the plaintiff must prove that the university owed a duty of care to the student, that the university breached this duty, and that this breach was both the actual and proximate cause of the harm suffered.[63]

The focal point of most litigation in this area is whether such a duty of care exists.[64] In seeking to establish a duty, students typically will claim that universities (1) stand *in loco parentis* to their students;[65] (2) share a special relationship with their students;[66] (3) assume a duty because of their regulation or control over organizational activity;[67] or (4) have a duty to protect students pursuant to their status as invitees.[68]

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62. Miyamoto, *supra* note 21, at 150. Negligence is "conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm." RESTATEMENT (SECOND) OF TORTS § 282 (1989). *See generally* Rubtchinsky v. State Univ. of N.Y. at Albany, 260 N.Y.S.2d 256 (Ct. Cl. 1965) (involving student who brought action against university for negligently supervising pushball game organized by Student Association); Beach v. University of Utah, 726 P.2d 413 (Utah 1986) (involving student who brought negligence action against university for failing to adequately supervise field trip).

63. Miyamoto, *supra* note 21, at 150.

64. Douglas R. Richmond, *Institutional Liability for Fraternity Hazing: Furek v. University of Delaware*, 50 ED. LAW REP. 1 (1989). This article provides a detailed discussion of the history of institutional liability resulting from harm to students. It is important to note, however, that it discusses the Superior Court ruling in *Furek* which was subsequently overturned. *See infra* notes 124-38 and accompanying text.

65. *See* Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir. 1979) (discussing *in loco parentis* theory of liability for universities), *cert. denied*, 446 U.S. 909 (1980). For a further discussion of this theory, see *infra* notes 69-97 and accompanying text.

66. *Id.* For a further discussion of this theory, see *infra* notes 98-113 and accompanying text.

67. *See* Furek v. University of Del., 594 A.2d 506 (Del. 1991). For a further discussion of this theory, see *infra* notes 114-17 and accompanying text.

68. *See* Booker v. Lehigh Univ., 800 F. Supp. 234 (E.D. Pa. 1992), *aff'd*, 995 F.2d 215 (3d Cir. 1993). The University owes a duty to its invitee student to protect him

A. *The Doctrine of* In Loco Parentis *and its Demise*

Historically, universities stood "in the place of a parent" under the common law doctrine of *in loco parentis*.[69] Under this doctrine, universities were expected to act as guardians of student health, welfare, safety, and morals.[70] The doctrine allowed university authorities to discipline students and to foster their physical and mental welfare.[71]

The case of *Gott v. Berea College* first formally applied the doctrine to higher education.[72] In *Gott*, the Kentucky Supreme Court allowed Berea College to prohibit its students from patronizing local restaurants.[73] In holding that the college could enact such rules, the court explained the proper application and purpose of the *in loco parentis* doctrine:

> College authorities stand in loco parentis concerning the physical and moral welfare and mental training of the pupils, and we are unable to see why, to that end they may not make any rule or regulation for the government or betterment of their pupils that a parent could for the same purpose. Whether the rules or regulations are wise or their aims worthy is a matter left solely to the discretion of the authorities or parents.[74]

The doctrine, contrary to doctrinal intent, was expanded to impose liability on universities based on university status as guardian of the physical welfare of its students.[75] In *Gott*, the court stated that college

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or her from an unreasonably dangerous condition in the use of University property, regardless of whether a third party creates the condition, if the acts of those third parties are foreseeable. RESTATEMENT (SECOND) OF TORTS § 323 (1976). For further discussion of this theory, see *infra* notes 118-23 and accompanying text.

69. BLACK'S LAW DICTIONARY 787 (6th ed. 1980). *In loco parentis* is defined as: "In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities." *Id.*

70. Spring J. Walton, *In Loco Parentis for the 1990's: New Liabilities*, 19 OHIO N.U. L. REV. 247, 248 (1992). "Institutions of higher education were regarded as benevolent guardians, free to govern and control the lives of students. Parents, college and university administrators—and even students—expected higher educational institutions to be the custodians of attendees' health, welfare, safety, and moral conduct, as well as their education." *Id.* (citations omitted).

71. For a discussion of the doctrine of *in loco parentis*, see generally Theodore C. Stamatakos, *The Doctrine of In Loco Parentis, Tort Liability and the Student-College Relationship*, 65 IND. L.J. 471 (1990); *see also* Board of Trustees of Univ. of Miss. v. Waugh, 62 So. 827, 831 (Miss. 1913) (affirming the constitutionality of the *in loco parentis* doctrine by allowing a university to enforce a state regulation forbidding university students to join fraternities), *aff'd*, 237 U.S. 589 (1915).

72. 161 S.W. 204 (Ky. 1913).

73. *Id.* at 207.

74. *Id.* at 206. *See also* John B. Stetson Univ. v. Hunt, 102 So. 637, 641 (Fla. 1924) (upholding university suspension of student after a mere cursory investigation).

75. Stamatakos, *supra* note 71, at 490. Under the doctrine of *in loco parentis*, universities may "devise, implement and administer student discipline and to foster

authorities had the power and legal authority to regulate the physical welfare of their students.[76] Logically, this legal authority corresponds with a legal duty of universities to protect the physical welfare of their students.[77] As universities began to exercise the rights created by the *in loco parentis* doctrine, courts began to recognize a correlative legal duty to protect the students subject to the exercise of such authority.[78]

In the 1960s and early 1970s, the changing status of the American college student rendered the doctrine of *in loco parentis* inoperative.[79] The doctrine initially applied to the college setting where students were considered children who had no individual rights to be free from discipline.[80] In the 1960s, however, the role of the average college student began to change as a result of the Vietnam War and the civil rights movement.[81] Several cases decided during these years rejected the doctrine on the basis that the student was a citizen who maintained rights while in college.[82]

In 1971, the 26th Amendment, lowering the federal voting age to eighteen, constitutionally changed the status of most college students from minor to adult.[83] Once this status changed, the role of the university had

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the physical and moral welfare of students." *Id.* Furthermore, "as college administrators governed students with parental authority, courts began to recognize a correlative legal duty to protect the students over which such authority was exercised." *Id.* (citations omitted). *See generally* Brigham Young Univ. v. Lillywhite, 118 F.2d 836 (10th Cir.) (holding university liable for injuries sustained by student in chemistry lab explosion that occurred while instructor was absent from the classroom), *cert. denied*, 314 U.S. 638 (1941); Barr v. Brooklyn Children's Aid Soc'y, 190 N.Y.S. 296 (Sup. Ct. 1921) (stating that university is liable for injuries to students caused by negligence of its servants).

76. *Gott*, 161 S.W. at 206.

77. Stamatakos, *supra* note 71, at 490. "The exercise of legal authority is inextricably bound with the obligations of legal duty, and *Gott* suggests that the in loco parentis doctrine imposes a duty to protect the physical welfare of students." *Id.*

78. *See generally* James J. Szablewicz & Annette Gibbs, *Colleges' Increasing Exposure to Liability: The New In Loco Parentis*, 16 J.L. & EDUC. 453 (1987) (discussing the re-emergence of the *in loco parentis* doctrine).

79. *See* Gulland & Powell, *supra* note 25, at 3.

80. Szablewicz & Gibbs, supra note 78, at 454.

81. *Id.* at 456.

82. *See* Buttny v. Smiley, 281 F. Supp. 280, 286 (D. Colo. 1968) ("[The] doctrine of 'In Loco Parentis' is no longer tenable in a university community . . . . We do not subscribe to the notion that a citizen surrenders his rights upon enrollment as a student in a university."); Goldberg v. Regents of Univ. of Cal., 57 Cal. Rptr. 463, 470 (Ct. App. 1967) (stating that state universities should no longer stand *in loco parentis* in relation to their students).

83. U.S. CONST. amend. XXVI. Courts refuse to distinguish the university's duty to

to be revised. A new arms-length relationship between universities and students thus replaced the parental relationship.[84] *Bradshaw v. Rawlings*[85] definitively rejected the application of the doctrine of *in loco parentis* to tort liability. In *Bradshaw*, the plaintiff, Donald Bradshaw, was an eighteen-year-old student severely injured in a car collision while returning from an off-campus sophomore class picnic.[86] The driver of Bradshaw's vehicle had become intoxicated at the picnic.[87] The picnic was an annual event sponsored by the sophomore class; the class advisor had co-signed a check for the class funds used to purchase the alcohol; and flyers advertising the event and depicting beer mugs were conspicuously displayed across campus.[88]

The jury awarded a $1,108,067 verdict in favor of Bradshaw and against Rawlings and Delaware Valley College.[89] The appellate court, however, reversed and held that the college did not owe a duty of custodial care to Bradshaw.[90] The court traced the evolution of student status from minor to adult and determined that the college administrator should no longer be looked at as an authoritarian figure, and that the new rights demanded by students abrogated the role of *in loco parentis*.[91] The

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students under the age of 18 from its duty to those over the age of 18. *See* Baldwin v. Zoradi, 176 Cal. Rptr. 809, 817 (Ct. App. 1981) ("Although it is alleged that some of the student defendants were under the age of 18 years, it may be assumed that the majority of students at Cal Poly have attained majority.").

84. *See generally* Valerie L. Brown, *Look Mom, No Hands*, 137 N.J. LAW. 34 (1990) (discussing the doctrine of *in loco parentis* and its demise). The new status of college students throughout the United States created a fundamental change in society. *Id.* at 38. The new expansive privacy rights of students forced universities to limit their regulation of student life both on and off-campus. *Id.* Further, universities were no longer able to control the morals of their students. *Id.* These changes in the role of the university allow students today to define and regulate their own lives without interference from the university. *Id.*

85. 612 F.2d 135 (3d Cir. 1979), *cert. denied*, 446 U.S. 909 (1980).

86. *Id.* at 136-37. When the accident occurred, Bradshaw rode in the backseat of an automobile driven by a fellow student, Rawlings, as the students were returning to the college from the picnic. The car crashed into a parked vehicle after Rawlings lost control. As a result of the collision, Bradshaw received a cervical fracture, rendering him a quadriplegic. *Id.* at 136.

87. *Id.* Rawlings testified that he had no recollection of what happened from the time he left the picnic until after the accident. *Id.*

88. *Id.* at 137. The picnic was not held on campus, yet the faculty and administration were aware of its occurrence. *Id.* Six or seven half-kegs of beer were consumed by approximately 75 students. *Id.* Neither the faculty advisor, nor any other faculty member, supervised or even attended the picnic. *Id.*

89. *Id.*

90. *Id.* at 143.

91. *Id.* at 138. In reaching its decision, the court stated:

> Our beginning point is a recognition that the modern American college is not an insurer of the safety of its students. Whatever may have been its re-

court stated the well-settled proposition, "[n]egligence in the air, so to speak, will not do," and found no duty on the part of the university.[92]

After the *Bradshaw* decision, courts uniformly denied recovery to injured students on the basis of the *in loco parentis* doctrine.[93] In addition to rejecting the doctrine on the basis of the majority status of students, courts also rejected the doctrine on the grounds that it is unreasonable to require universities to supervise and control young adults "when imposition of such a duty is impractical, unenforceable and inconsistent with the goals of a college education."[94] Holding that the University of Utah was not liable for injuries sustained by a student while on a university sponsored field trip, the Utah Supreme Court stated:

> [C]olleges and universities are educational institutions, not custodial. Their purpose is to educate in a manner which will assist the graduate to perform well in the civic, community, family, and professional positions he or she may undertake in the future. It would be unrealistic to impose upon an institution of higher education the additional role of custodian over its adult students. . . . Fulfilling this charge would require the institution to babysit each student, a task beyond the resources of any school. But more importantly, such measures would be inconsistent with the nature of the relationship between the student and the institution, for it would produce a repressive and inhospitable environment, largely inconsistent with the objectives of a modern college education.[95]

Bradshaw and its progeny stand for the proposition that the doctrine of *in loco parentis* is no longer a viable theory upon which students can base claims for negligence against universities.[96]

Recent cases, however, have retreated from the *Bradshaw* ruling, causing commentators to consider the re-emergence of the *in loco parentis* doctrine.[97] Before discussing these cases and their effect on university

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> sponsibility in an earlier era, the authoritarian role of today's college administrators has been notably diluted in recent decades. Trustees, administrators, and faculties have been required to yield to the expanding rights and privileges of their students.

Id.

92. *Id.* at 138 (quoting FREDERICK POLLOCK, LAW OF TORTS § 468 (13th ed. 1929)).

93. *See generally* Baldwin v. Zoradi, 176 Cal. Rptr. 809 (Ct. App. 1981); Rabel v. Illinois Wesleyan Univ., 514 N.E.2d 552 (Ill. App. Ct. 1987); Campbell v. Board of Trustees of Wabash College, 495 N.E.2d 227 (Ind. Ct. App. 1986); Eiseman v. State, 511 N.E.2d 1128 (N.Y. 1987), *appeal denied*, 520 N.E.2d 392 (N.Y. 1988); Beach v. University of Utah, 726 P.2d 413 (Utah 1986).

94. Gulland & Powell, *supra* note 25, at 3-4.

95. *Beach*, 726 P.2d at 419 (citations omitted).

96. *See Bradshaw*, 612 F.2d at 138.

97. *See* Szablewicz & Gibbs, supra note 78, at 461-64.

liability for actions of student organizations, it is important to first address the other theories upon which a duty may be found. These include: duty based on the special relationship between university and student, university duty predicated on explicit assumption of a duty, and duty based on university status as landowner.

B. Special Relationship Theory

The second theory upon which plaintiffs rely when asserting a negligence claim against a university is that the special relationship between the university and the student creates a duty of care.[98] Examples of such special relationships include innkeeper-guest, parent-child, common carrier-passenger, and landowner-invitee.[99] Although courts continually expand the special relationship theory of duty to any relation of dependence, courts have been reluctant to apply the theory to the university-student relationship.[100]

The *Bradshaw* court, in addition to refusing to apply the doctrine of *in loco parentis* to the 1970s university-student relationship, also rejected the assertion that there was a special relationship between the university and the student.[101] Bradshaw asserted a university duty based on both the *in loco parentis* doctrine and the theory that the student and college relationship was a special relationship which gave rise to a duty of care.[102] The court rejected this argument, stating that Bradshaw and the lower court had blurred the distinction between duty and breach. The court further found that Bradshaw failed to establish a special relationship and thus there was no duty.[103]

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98. *See, e.g., Bradshaw*, 612 F.2d at 141. "There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct." RESTATEMENT (SECOND) OF TORTS § 315 (1989).

99. *Bradshaw*, 612 F.2d at 141; *See also* RESTATEMENT (SECOND) OF TORTS § 314A, cmts. b, c (1989).

100. Douglas R. Richmond, *How One Bad Decision Has Shaped the Law of Higher Education: Bradshaw v. Rawlings*, 56 Ed. L. Rep. 411, 412-13 (1990) (citing RESTATEMENT (SECOND) OF TORTS § 314 cmt. b (1989)).

101. *Bradshaw*, 612 F.2d at 141-42.

102. *Id.* at 142. Bradshaw primarily argued that

> the college had knowledge that its students would drink beer at the picnic, that this conduct violated a school regulation and state law, that it created a known probability of harm to third persons, and that knowledge by the college of this probable harm imposed a duty on the college either to control Rawlings' conduct or to protect Bradshaw from possible harm.

Id. at 141.

103. *Id.* at 142.

In *University of Denver v. Whitlock*,[104] the Colorado Supreme Court analyzed the university-student relationship and definitively concluded that no duty of care exists under the special relationship theory.[105] In *Whitlock*, Oscar Whitlock became a quadriplegic as a result of falling off a trampoline located on the front yard of his fraternity situated on University property.[106] At trial, the court held the university liable for negligence and awarded Whitlock $5,256,000.[107] The trial court granted the university's motion for judgment notwithstanding the verdict and held that no reasonable jury could have found the university more negligent than Whitlock.[108] The court further found that the jury's award was the result of "sympathy, passion or prejudice."[109] The court of appeals reversed and ordered the trial court to reinstate the jury verdict.[110]

The Colorado Supreme Court then reversed, holding that the university owed no duty to Whitlock.[111] The court stated "'the question of whether a duty should be imposed . . . is . . . one of fairness under contemporary standards—whether reasonable persons would recognize a duty and agree that it exists.'"[112] In determining that the university owed no duty

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104. 744 P.2d 54 (Colo. 1987).

105. *Id.* at 55.

106. *Id.* The fraternity owned the trampoline. *Id.*

107. *Id.* at 56. Whitlock sued both the manufacturer and the seller of the trampoline, the fraternity and its local chapter, certain individuals in their capacities as representatives of the fraternity, and the University. *Id.* at 56. All parties except the University settled, and only the negligence action against the University actually proceeded to trial. *Id.* The court assessed Whitlock's damages at $7,300,000. *Id.* The jury attributed 28% of the negligence to Whitlock himself and 72% of causal negligence to the University. *Id.*

108. *Id.* at 56.

109. *Id.* The trial court also ruled that if the appellate court reversed the judgment notwithstanding the verdict, the jury award should be reduced to $4,000,000. *Id.* To ensure that the jury award did not stand, the trial court also ordered a new trial should the court of appeals disapprove the remittitur. *Id.*

110. *Id.* The court of appeals reversed all three rulings of the trial court. Whitlock v. University of Denver, 712 P.2d 1072 (Colo. Ct. App. 1985), *rev'd*, 744 P.2d 54 (Colo. 1987). The appellate court found that the university owed Whitlock a duty of due care and that in order to fulfill that duty, the university should have either removed the trampoline or supervised its use. *Whitlock*, 744 P.2d at 56.

111. *Id.* at 55.

112. *Id.* at 57 (quoting Taco Bell, Inc. v. Lannon, 744 P.2d 43, 46 (Colo. 1987)). The court weighed the policy considerations surrounding the imposition of a duty upon the university in this situation. *Id.* at 56. The court understood that its conclusion whether "a duty does or does not exist is 'an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is [or is not] entitled to protection.'" *Id.* (quoting W. PAGE KEETON ET AL., PROSSER AND KEETON ON

to Whitlock, the court stated:

> In today's society, the college student is considered an adult capable of protecting his or her own interests; students today demand and receive increased autonomy and decreased regulation on and off campus. The demise of the doctrine of in loco parentis in this context has been a direct result of changes that have occurred in society's perception of the most beneficial allocation of rights and responsibilities in the university-student relationship. By imposing a duty on the University in this case, the University would be encouraged to exercise more control over private student recreational choices, thereby effectively taking away much of the responsibility recently recognized in students for making their own decisions with respect to private entertainment and personal safety. Such an allocation of responsibility would "produce a repressive and inhospitable environment, largely inconsistent with the objectives of a modern college education."[113]

The *Whitlock* court applied the reasoning which supported the demise of the *in loco parentis* doctrine, also, to reject the special relationship theory of duty. In doing so, the court reiterated that neither of the two theories will support a claim of negligence against a university.

C. Assumption of Duty

Another theory upon which plaintiffs rely when bringing suit against a university for liability is that the university has explicitly assumed a duty and is therefore legally bound to reasonably exercise that duty.[114] The Second Restatement of Torts provides:

> [O]ne who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if . . . he has undertaken to perform a duty owed by the other to the third person.[115]

THE LAW OF TORTS § 53 (5th ed. 1984)). The court noted:

> [C]hanging social conditions lead to the recognition of new duties and the erosion of others. Various factors that have been given conscious or unconscious weight by the courts in determining whether a duty exists include convenience of administration, capacity of the parties to bear the loss, a policy of preventing future injuries, the moral blame attached to the wrongdoer, and availability, cost, and prevalence of insurance for the risk involved.

Whitlock, 744 P.2d at 57 n.2 (citing W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 53 (5th ed. 1984)).

113. *Id.* at 60 (quoting Beach v. University of Utah, 726 P.2d 413, 419 (Utah 1986)).

114. *See, e.g.*, Furek v. University of Del., 594 A.2d 506, 515 (Del. 1991).

115. RESTATEMENT (SECOND) OF TORTS § 324(b) (1989). A duty may also be established under RESTATEMENT (SECOND) OF TORTS § 323 which states:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertak-

If a university explicitly assumes a duty, the university must reasonably exercise that duty.[116] The burden, however, is on the student to prove that the university explicitly assumed such a duty.[117]

D. University as Landowner

A student who is injured on campus may prevail by establishing that a university owes him a duty on the basis that he is an invitee.[118] The duty placed on the university is that of a reasonable landowner.[119] Accordingly, an institution will only be held liable if they had prior knowledge of a dangerous condition and failed to take reasonable care to protect students from that harm.[120] Therefore, although claims against universities founded on the university status as landowner have been successful, the student will succeed only after showing: (1) that the injury occurred on university property, (2) that the university had prior knowledge of the

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ing, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

Id.

116. *See, e.g., Furek*, 594 A.2d at 519-20.

117. *Id.*

118. RESTATEMENT (SECOND) OF TORTS § 344 (1989). The Restatement provides:

A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to (a) discover that such acts are being done or are likely to be done, or (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it.

Id.

119. *Furek*, 594 A.2d at 521. A landowner is only liable for foreseeable acts of third persons which are subject to control of the landlord. *Id.* The landowner is under no duty to exercise any care until he knows or has reason to know that the third person is in the process of acting or is about to act. *Id.* Such information may be inferred if the landowner has knowledge of the likelihood of such action. *Id.* To provide reasonable protection for invitees, the landowner should take precautions against reasonably anticipated careless or criminal conduct. *Id.*

120. *Id.*; *see also* Vreeland v. State Bd. of Regents, 449 P.2d 78, 82 (Ariz. Ct. App. 1969) (stating that while a university is not an insurer of the plaintiff's safety, it is under a duty to make the premises reasonably safe for the student's use).

dangerous condition which caused the injury, and (3) that the university failed to act as a reasonable landowner.[121]

After *Bradshaw*, plaintiffs were unable to succeed in establishing a duty based on *in loco parentis* or the special relationship theory. Instead, a plaintiff could only succeed by proving that the university affirmatively assumed a duty or was negligent in its capacity as landowner. Problems arise, however, in determining whether a university has, in fact, assumed a duty. Furthermore, courts have begun to reconsider the rules set forth in *Bradshaw* and allow students, in certain circumstances, to bring a claim based on both the *in loco parentis* doctrine and the special relationship theory.[122] These cases now force commentators to postulate the re-emergence of university liability for injuries caused by student organizations.[123]

1. Reversing the Trend: *Furek v. University of Delaware*[124]

The Supreme Court of Delaware dealt a severe blow to educators and administrators when it held that the University of Delaware could be held liable for injuries sustained by a student during a fraternity "Hell Week."[125] In *Furek*, Jeffrey Furek pledged the Sigma Phi Epsilon fraternity during his sophomore year at the University of Delaware.[126] Sigma Phi Epsilon pledge activities ended with an initiation ritual referred to as "Hell Night," where active members of the fraternity hazed the pledges.[127] One of the activities consisted of pouring various foodstuffs, including pancake batter, syrup, and cereal, over the pledges.[128] A frater-

121. *See Furek*, 594 A.2d at 521.

122. *Id.* at 522-23.

123. Szablewicz & Gibbs, *supra* note 78, at 461-64.

124. 594 A.2d 506 (Del. 1991).

125. *Id.* at 509.

126. *Id.* Furek was a member of the University of Delaware football team. *Id.* At the urging of members of the football team who were also members of the fraternity, Furek decided to pledge the fraternity early in his sophomore year. *Id.*

127. *Id.* Students who wanted to become members of the fraternity underwent an eight week pledge period and a process known as "brotherhood development." *Id.* During this "development," fraternity members subjected pledges to various forms of hazing. *Id.* "Hell Night" was a secret ritual consisting of an extensive hazing period during which members of the fraternity physically and emotionally abused the pledges. *Id.*

128. *Id.* at 510. The pledges, clad only in T-shirts and jeans, were required to crawl to the fraternity house while active fraternity members sprayed them with fire extinguishers. *Id.* at 509. The pledges were then sent to different rooms in the house where they were "humiliated and degraded." *Id.* This humiliation included paddling, forced calisthenics and consumption of food from a toilet. *Id.*

nity member either accidentally or deliberately doused Furek with a caustic lye-based oven cleaner causing burns on his face, chest, and back, leaving Furek permanently scarred.[129]

Furek sued the university, the national Sigma Phi Epsilon fraternity, the local chapter, and the fraternity member who doused him.[130] Furek prevailed in a jury trial and received $30,000 in damages with ninety-three percent of the responsibility apportioned to the university.[131] The trial court granted the university's motion for judgment notwithstanding the verdict, holding that (1) the university-student relationship is not a special relationship giving rise to a duty of care, and (2) the university's anti-hazing policy, which included sanctions available to punish violators, was not sufficient control of fraternity activities to create a duty of care.[132]

The Supreme Court of Delaware reversed the trial court decision and held that the university may be liable for Furek's injuries.[133] The court reasoned that because the university adopted an anti-hazing policy, communicated the dangers of hazing to the students, and emphasized its discipline policy for hazing violations, the university thus assumed sufficient control over hazing activities to create a duty of care.[134]

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129. *Id.* at 510. Furek suffered second degree chemical burns on his face, neck and back. *Id.* As a result, he withdrew from school and relinquished his football scholarship which included tuition, room and board. *Id.* at 509-10.

130. *Id.* at 509.

131. *Id.* The National Fraternity was not found liable for any of the injuries sustained. *Id.*

132. *Id.* at 516. The trial court applied § 324A(b) of the Restatement (Second) of Torts to determine if there was a duty owed to Furek. *Id.* at 515. Section 324A (b) provides:

> [O]ne who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if . . . (b) he has undertaken to perform a duty owed by the other to the third person.

RESTATEMENT (SECOND) OF TORTS § 324A(b) (1989). The trial court found that the evidence failed to demonstrate that Furek either relied on the university for safety or believed that the university had a duty of care in lieu of the fraternity. *Furek*, 594 A.2d at 516.

133. *Id.* at 519-20.

134. *Id.* "[W]here there is direct university involvement in, and knowledge of, certain dangerous practices of its students, the university cannot abandon its residual duty of control." *Id.* at 520.

In reaching its decision, the court considered the decisions in *Bradshaw*, *Beach*, and *Whitlock* and concluded that "although the University no longer stands *in loco parentis* to its students, the relationship is sufficiently close and direct to impose a duty."[135] The court recognized the demise of the *in loco parentis* doctrine as it related to university control over students.[136] The court, however, refused to hold that no duty existed.[137]

The *Furek* court rejected the *Bradshaw*, *Beach*, and *Whitlock* decisions, stating that both *Beach* and *Bradshaw* may be "faulted on the logic of their analysis."[138] Thus, the court opened the door for further rejection of these decisions by other courts.

Furek makes it clear that freedom from liability for actions of student groups as set forth in *Bradshaw*, is not absolute, and that universities may be held liable if the court finds that a special relationship exists. The question, however, remains as to what constitutes sufficient control to create a duty of care.

2. The Effect of These Rulings on Universities

Because there is no definitive ruling as to when a university will be held liable for actions by organizations,[139] universities are continuously defending against numerous suits brought against them.[140] In response to these conflicting rulings, universities must struggle with the task of developing guidelines for student organizations in an attempt to shield themselves from liability.[141] Some universities have chosen to complete-

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135. *Id.* at 522. The court stated: "The university is not an insurer of the safety of its students nor a policeman of student morality, nonetheless, it has a duty to regulate and supervise foreseeable dangerous activities occurring on its property." *Id.*

136. *Id.* at 517.

137. *Id.* The court stated: "While we agree that the University's duty is a limited one, we are not persuaded that none exists." *Id.*

138. *Id.* at 518. The court noted that in both *Beach* and *Bradshaw*, the courts rejected the university duty primarily because the courts considered the students responsible adults. *Id.* The *Furek* court found this logic inapplicable because the students involved in both cases were not legal adults as they were younger than the minimum drinking age. *Id.*

139. *Compare Furek*, 594 A.2d at 506 (holding university liable for injuries sustained by student during hazing when university had policy against hazing) *with* Booker v. Lehigh Univ., 800 F. Supp. 234 (E.D. Pa. 1992) (holding university not liable for injuries sustained by student injured after drinking at four fraternity cocktail parties when university had policy against drinking and university provided security), *aff'd*, 995 F.2d 215 (3d Cir. 1993).

140. *See supra* note 12 and accompanying text.

141. Gulland & Powell, *supra* note 25, at 1 (citing John Rumsey, *Legal Aspects of the Relationship between Fraternities and Public Institutions of Higher Education*, 11 J.C. & U.L. 465 (1985)). "Despite more than 200 years' experience, colleges and

ly remove themselves from the situation by refusing to recognize certain student organizations.[142]

Part IV of this Comment discusses two approaches a university may adopt to manage the risk of liability. The university may choose to remove itself from governance of all student groups thereby ensuring that it has assumed no duty of care.[143] In the alternative, the university may choose to rigorously regulate its student organizations, thereby explicitly dictating areas in which it assumes a duty.[144] Part IV also discusses the advantages and disadvantages of each option.[145] Through either approach a university can continue to recognize and support student organizations while effectively limiting potential liability.

IV. LIMITING THE RISK OF LIABILITY

Applying the rules set forth in both *Bradshaw* and *Furek*, universities appear to have two approaches from which to choose when drafting policies regarding student organizations. The university can either relinquish all control over student organizations, or it can strictly control student organizations with detailed policies and prohibitions. Although these approaches are diametrically opposite, both will achieve the same result of limiting the university's risk of liability for actions of student organizations.

A. The Freedom From Liability Approach

A university that chooses to employ the first approach essentially gives up control of the student organizations through non-regulation.[146] Under

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universities are still struggling to define and manage relationships with their students' social fraternities and sororities." *Id.*

142. *See* Curry, *supra* note 8, at 102. In 1983, only 1.8% of American colleges and universities considered local fraternity houses to be independent of university supervision. *Id.* at 111. In 1986, however, 34.8% of these universities had completely severed their relations with their fraternities. *Id.* at 111-12.

143. *See infra* notes 146-83 and accompanying text.

144. *See infra* notes 184-213 and accompanying text.

145. *See infra* notes 171-83 and 207-13 and accompanying text.

146. For example, to avoid liability for fraternity actions, several colleges and universities, including Amherst College, Williams College, the University of Lowell, Colby College, the University of California at Santa Cruz, Franklin and Marshall, and American International, have banned fraternities and sororities from their institutions altogether. Curry, *supra* note 8, at 110. The University of Virginia requires fraternities to sign contracts exempting the university from liability for any fraternity actions. *Id.*

this theory, the less responsibility that the university assumes for an organization, the less likely it is that it will be held liable for the organization's actions.[147]

1. Recognition Procedures

For such an approach to be successful, the university must make it clear that it does not have an agency relationship with its student groups.[148] Both entities can establish the limited relationship through well-defined formal recognition procedures.[149]

First, the university and organization must agree that only specifically indicated privileges apply, and that recognition does not constitute approval, endorsement, sponsorship, or acceptance of liability for the actions of the organization.[150] By limiting the definition of recognition, the university makes it clear to the organization and to the courts that it assumes no duties in connection with the existence of the group.[151]

Second, guidelines should clearly state that the organizations should not advise or mislead third parties into believing that they are agents of the university.[152] If third parties believe that the group is an agent of the university, that party may be likely to believe that the university accepts responsibility for actions of the group.[153] A court may impose a duty on the university if the court finds that a special relationship exists between the university and the group in the form of a duty to control the group's conduct.[154] Thus, from the onset, the university must make it clear to the group that no such special relationship exists.[155] By requiring groups

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(citations omitted).

147. *Id.* at 114. Generally, the more control that a university exerts over its fraternities, the more legal exposure it assumes. *Id.* at 111. "'With control comes legal responsibility, and when the lawsuits start flying a university has nowhere to hide.'" *Id.* (quoting *Newsweek on Campus*, Apr. 1988, at 9). *See also* Spring J. Walton et al., *The High Cost of Partying: Social Host Liability For Fraternities and Colleges*, 14 WHITTIER L. REV. 659, 667 (stating that tighter university control can lead to increased university liability).

148. Gulland & Powell, *supra* note 25, at 12. The existence of an agency relationship may give rise to liability. *Id.* "An 'agent' is one who operates under the supervision and for the benefit of his or her 'principal;' the principal is liable to third persons who suffer injuries resulting from the agent's negligent acts performed within the scope of the duties assigned by the principal." *Id.*

149. *Id.*

150. *Id.* at 14.

151. *Id.* at 13. This limitation exists even when the university officially recognizes a group as part of the university. *Id.*

152. *Id.* at 13-14.

153. *Id.*

154. *Id.* at 19. *See also* RESTATEMENT (SECOND) OF TORTS § 315 (1989); Furek v. University of Del., 594 A.2d 506 (Del. 1991).

155. Gulland & Powell, *supra* note 25, at 14. "[T]he recognition procedures should

to ensure that third parties understand the group is not an agent of the university, the university ensures that no special relationship exists.[156]

Finally, when universities provide purchasing and financial management services for organizations, it should be made contractually clear that the organization, not the university, bears sole responsibility for compliance.[157] Again, a court may find a duty based on the existence of a special relationship between the university and the organization.[158] To ensure that no such special relationship exists, the university must make it clear that it is a separate entity from the organization.[159]

If the university clearly limits recognition of student organizations to simply "recognition," then the university limits its liability for actions of the organization because it does not assume any duty related to the organization.[160] By refusing to adopt any regulations concerning student groups, there is no fear that a court may find that the regulations constituted sufficient control to create a duty of care.[161] Therefore, the university can escape liability while continuing to maintain student organizations.

2. Faculty Advisors[162]

If a university chooses to follow this route, it must ensure that there exists no connection between the organization and the university in any way other than by name and location.[163] The university cannot authorize faculty advisors, and in fact, should have a policy delegating that respon-

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make clear that they do not reflect the college's approval, sponsorship, or endorsement of a fraternal organization, nor symbolize any special relationship between any student organization and the school." *Id.*

156. *Id.*

157. *Id.*

158. *See* RESTATEMENT (SECOND) OF TORTS § 315 (1989). *See also Furek*, 594 A.2d at 506.

159. *See* Gulland & Powell, *supra* note 25, at 14.

160. *Id.*

161. *See Furek*, 594 A.2d at 519-20 (stating that university regulations of hazing may constitute sufficient control to create a special relationship between university and student giving rise to a duty of care).

162. For a discussion of the role of faculty advisors of fraternities and sororities, see Gulland & Powell, *supra* note 25, at 15-18. The practice of encouraging faculty advisors "affords the inference that the fraternal organization is a supervised arm of the university, or at least that the school has assumed the duty of supplying some degree of guidance." *Id.* at 15-16.

163. *Id.* at 14.

sibility to the groups themselves.[164] Furthermore, these advisors must act only in their personal capacities to advise and counsel and not as school representatives.[165] Any action on the part of faculty advisors in their capacity as employees of the university may give rise to university liability.[166] Furthermore, the university should also require that the organization compensate the faculty advisor for his time.[167] The university must not allow faculty members to participate in organizational activities during university time.[168] Again, any connection between the university and the organization may give rise to university liability.[169] Finally, the university must not empower advisors to exercise any supervisorial authority on behalf of the school.[170] To do so would be tantamount to assuming liability for actions of the student organizations.

3. Advantages and Disadvantages

This approach speaks to many of the university concerns regarding student organizations. By relinquishing control over the groups and by clearly stating this policy to the organizations and the student body, courts are not likely to find that the university assumed any duty of care to control the actions of student organizations.[171] Therefore, it is highly unlikely that the university will be held liable for these actions.[172] Additionally, because this approach requires fraternities to remain separate from the university, the university need not regulate the organizations. The university, then, is able to reap the benefits of these organizations without having to deal with the hassle of regulation. Although these advantages make this approach appear ideal, there are some disadvantages.

First, the approach inherently requires the university to relinquish control over its student organizations. In doing so, the university loses some control over its students.[173] Many universities may wish to retain

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164. *Id.*

165. *Id.* These guidelines regarding the role of the faculty advisor should be contained in the organization recognition documents. *Id.*

166. *See, e.g.*, Zavala v. Regents of the Univ. of Cal., 178 Cal. Rptr. 185 (Ct. App. 1981). In *Zavala*, plaintiff attended a party at the University of California, Santa Cruz. *Id.* at 186. The resident assistant and the preceptors of the dormitory hosted the party at which plaintiff became intoxicated. *Id.* The court held the university liable for negligence. *Id.* at 187.

167. *See* Gulland & Powell, *supra* note 25, at 16.

168. *See id.*

169. *Id.*

170. *Id.*

171. *See id.* at 12.

172. *Id.*

173. *See supra* notes 21-24 and accompanying text.

this control.[174] Additionally, although the university is separate from the organization, the university still ties its name to the organization.[175] Therefore, the university risks injury to its reputation by giving up control.

Secondly, the university, although it will ultimately be held not liable for injuries sustained, will still bear the burden of legal costs.[176] Injured students will still bring claims against the university because of its perceived "deep pockets."[177] Furthermore, every claim will connect the university name with the injury.[178]

Additionally, the university may risk its reputation in court. To defend against these actions, the university must claim that it has no duty to its students to protect the students from activities such as hazing or excessive drinking.[179] To make that claim, the university must assert that its role is that of educator and nothing more.[180] Because prospective students consider more than the academic aspect of institutions, universities may risk future enrollment by making such assertions.[181]

Finally, organizations will have difficulty obtaining faculty advisors.[182] Faculty advisors will not want to volunteer to aid an organization be-

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174. *See infra* notes 184-206 and accompanying text.

175. This problem also arises when the university chooses not to recognize certain student groups. *See* Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ., 536 A.2d 1 (D.C. 1991). Neither public institutions nor private institutions can deny funding or benefits to any student group regardless of whether the university formally recognizes the group. *Id.* The term "benefits" includes the right to use the university name. *Id.*

176. *See, e.g.*, University of Denver v. Whitlock, 744 P.2d 54, 56 (Colo. 1987) (university found liable at trial; reversed on appeal to the Supreme Court of Colorado).

177. Gulland & Powell, *supra* note 25, at 4. *See generally* Furek v. University of Del., 594 A.2d 506 (Del. 1991); University of Denver v. Whitlock, 744 P.2d 54 (Colo. 1987).

178. Regardless of whether the university is found not liable for the injuries sustained, the university name will be associated with the injury. *See, e.g., Whitlock*, 744 P.2d at 54. In *Whitlock*, for example, although the court ultimately held the University of Denver not liable for the injuries sustained by the plaintiff, the University name is still associated with a trampoline injury causing a student to become a quadriplegic. *Id.*

179. *See generally* Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir. 1979) (involving a university that claimed that it did not owe a duty to its student to protect him from sustaining injuries), *cert. denied*, 446 U.S. 909 (1980).

180. *See id; see also* Gulland & Powell, *supra* note 25, at 8.

181. See *supra* notes 21-24 and accompanying text. *See also* Gulland & Powell, *supra* note 25, at 8.

182. *See supra* notes 162-70 and accompanying text.

cause they may be held personally liable for any injuries. Without faculty advisors, organizations will be run solely by students with no advisory control. Such functioning may alter the organization's structure thereby limiting the intended benefits provided by the organization.[183]

A university should carefully consider its intended goals before it chooses to adopt this approach. Large universities wishing to make available numerous and diverse student organizations may find this to be a desirable approach because it allows them to offer such organizations without fear of liability and without the need for rigorous regulation. Private universities with specified goals may find this approach to be undesirable because it requires them to give up too much control. These universities may prefer an approach which allows them to retain control.

B. The Controlling Approach

Some commentators assert that if a university can "practically and effectively reduce identifiable dangers through regulation, consistent with student rights," the university "should not allow speculative fears of liability to prevail over efforts to prevent injury."[184] With this next approach, which speaks to this belief, the university maintains control over the student organizations while limiting the risk of liability through continuous implementation of carefully conceived regulations and guidelines.[185]

1. Rules and Regulations

For a university to maintain control, while simultaneously limiting liability, it must incorporate certain standard organizational procedures. First, it must design and implement carefully conceived rules and regulations.[186] These regulations, unlike those in the "Freedom From Liability" approach, do not seek to separate the university from the organization.[187] Rather, they set rules for the organizations and define parame-

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183. *See* supra notes 21-24 and accompanying text.

184. Gulland & Powell, *supra* note 25, at 7-8. Gulland and Powell argue that common sense gives rise to this university guideline. *Id.* Even if it were practical for universities to maintain close supervision and control over their organizations, such control would compromise the educational goals of encouraging independent student thinking. *Id.* Therefore, universities should attempt to reduce identifiable dangers through regulation without compromising student rights. *Id.* at 8.

185. *Id.* at 10.

186. Gulland & Powell, *supra* note 25, at 12. Because universities use recognition procedures to regulate student organizations, adherence to the rules and regulations of the school may serve as a basis to find liability. *Id.* at 13.

187. *Id.* at 12-13. Regulations drafted for both approaches should nevertheless include a statement that there is no principal-agent relationship between the university

ters within which the university assumes a duty of control for actions by the organizations.[188]

Second, the university must continuously enforce these regulations.[189] Essentially, if the university makes the rule, it must enforce it or else risk liability.[190] By establishing rules, the university is in effect creating a duty of care. Once they create this duty of care, the university cannot breach the duty or else it will risk liability for negligence.[191] Therefore, to avoid liability, the university must strictly enforce its regulations.[192]

Universities may fear adopting such a policy because such policies establish a theory under which injured students may claim liability.[193] However, by identifying the areas in which the university assumes a duty, the university precludes a court from finding that it has assumed duties in other areas.[194] Therefore, the student will be less likely to name the

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and the organization. *Id.*

188. The purpose of the guidelines in the "Freedom From Liability" approach is to define the lack of relationship between the university and the organization apart from university recognition and conference of university benefits as required by law. *See supra* notes 146-61 and accompanying text.

The university should document recognition procedure and require annual acknowledgment by the organizations. Gulland & Powell, *supra* note 25, at 14. Gulland and Powell set forth the following requirements for the writing:

(1) [A] description of the limited purpose of recognition . . . ;
(2) [R]ecital of the lack of [a] principal-agent relationship . . . ;
(3) Acknowledgement that the organization is separately chartered as an independent corporation;
(4) Confirmation that the college assumes no responsibility to the organization to provide any supervision [or] control;
(5) Restrictions upon the organization's use of the [university's] name . . . which might suggest that the [organization] is affiliated with the school;
(6) Requirement that the organization furnish evidence [of] . . . insurance.

Id. at 14-15.

189. *Id.* at 18. "Compromising the integrity of rules can be worse than having no rules at all." *Id.*

190. *Id.* at 18-19.

191. *See* Furek v. University of Del., 594 A.2d 506 (Del. 1991) (holding university liable for damages sustained as a result of fraternity hazing when university actively regulated hazing on campus).

192. *See* Gulland & Powell, *supra* note 25, at 18.

193. However, the university may be in a worse position if it chooses to have no rules governing organizational conduct. *Id.* at 18-19. For example, if the university adopts a policy claiming it assumes no responsibility for organizational conduct and then it regularly regulates such conduct, the court may find that the written policy is merely the university's attempt to evade responsibility and liability. *Id.*

194. *See generally Furek*, 594 A.2d at 506.

university as a defendant when the university specifically delineates its duties.

Finally, the university must avoid unnecessary entanglements which offer no benefits.[195] Universities may choose this process because it affords them the opportunity to maintain control over the organizations in order to benefit students.[196] If the university becomes entangled in all aspects of the organization then it opens itself to all areas of liability while reaping no benefits.[197] Therefore, the university must be careful to limit the areas in which it becomes involved to those which provide a benefit to the university and the student.

2. Maintaining Control Over Certain Activities

There are certain activities over which a university should maintain control.[198] One of these activities is hazing. As discussed earlier, hazing is a problem on many campuses which support Greek life.[199] Universities which have attempted to regulate hazing have been held liable for injuries sustained during hazing.[200] The question which arises is—how can a university regulate hazing so as not to incur liability?

The first step to regulation without liability is to design rules prohibiting all hazing. A majority of the states have enacted criminal anti-hazing statutes and, therefore, the university can create rules which mirror these statutes.[201] The university must then enforce these regulations.

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195. *See* Gulland & Powell, *supra* note 25, at 19-20. "[C]olleges and universities should consciously decide whether each relationship is worth the associated risk and ensure that the school is discharging with due care any duty that it might have unintentionally assumed over the years." *Id.*

196. *Id.* at 19-20.

197. *Id.*

198. *See id.* at 43.

199. *See supra* notes 1-12 and accompanying text.

200. *See* Furek v. University of Delaware, 594 A.2d 506 (Del. 1991) (holding university liable for injuries sustained during hazing).

201. *See* Curry, supra note 8, at 94. The Rhode Island anti-hazing statute is illustrative of other state statutes which criminalize hazing. *Id.* This statute provides that anyone found guilty of hazing may be fined between $10 and $100 or may be imprisoned for between 30 days and one year. *Id.* (citing R.I. GEN. LAWS § 11-21-1 (1986). The statute defines hazing as:

> [A]ny conduct or method of initiation into any student organization, whether on public or private property, which wilfully or recklessly endangers the physical or mental health of any student or other person. Such conduct shall include, but not be limited to, whipping, beating, branding, forced calisthenics, exposure to the weather, forced consumption of any food, liquor, beverage, drug, or other substance, or any brutal treatment or forced physical activity which is likely to adversely affect the physical health or safety of any such student or other person, or which subjects such student or other person to

Any indication of hazing should prompt immediate official investigation.[202] These may include discussions of hell week, reports to the infirmary by students with injuries indicative of hazing, or rumors and anecdotes of hazing activities.[203]

The university should also attempt to control the consumption of alcohol.[204] Most states have statutes which govern the consumption of alcohol by anyone under the age of twenty-one.[205] Again, university policies should mirror these statutes. In doing so, the university will not assume a duty to protect its students.[206]

3. Advantages to Control

There are many advantages to a university maintaining control of the actions of its student organizations. First, the university is able to control the conduct of the organizations.[207] By imposing regulations and requiring the organizations to comply with the regulations in order to continue university recognition, the university can dictate what constitutes acceptable and unacceptable conduct.[208] Therefore, even though the university

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extreme mental stress, including extended deprivation of sleep or rest or extended isolation.

R.I. GEN. LAWS § 11-21-1 (1986).

202. Gulland & Powell, *supra* note 25, at 43. State law may, in fact, impose requirements that universities regulate hazing on campus. *Id.*; *see, e.g.*, 24 PA. STAT. ANN. § 5354 (1988) (requiring colleges to adopt anti-hazing regulations and to implement programs for their enforcement).

203. Gulland & Powell, *supra* note 25, at 43.

204. *Id.* at 34; *see also* Baldwin v. Zoradi, 176 Cal. Rptr. 809, 817 (Ct. App. 1981) (acknowledging that a university does not assume liability for underage drinking by reserving the right to discipline underage students).

205. Gulland & Powell, *supra* note 25, at 34.

206. Bradshaw v. Rawlings, 612 F.2d 135, 141 (3d Cir. 1979), *cert. denied*, 446 U.S. 909 (1980). The *Bradshaw* court stated:

> [Plaintiff] has concentrated on the school regulation imposing sanctions on the use of alcohol by students . . . . We are not impressed that this regulation, in and of itself, is sufficient to place the college in a custodial relationship with its students for purposes of imposing a duty of protection in this case . . . . A college regulation that essentially tracks a state law and prohibits conduct that to students under twenty-one is already prohibited by state law does not, in our view, indicate that the college voluntarily assumed a custodial relationship with its students so as to [impose a duty of protection].

Id.

207. *See* Gulland & Powell, *supra* note 25, at 37-38.

208. *Id.*

may be removed from activities of the organization, it can still control how the organization conducts its activities.[209] Through this control, the university protects its students.[210] The university also ensures that its organizations do not tarnish the reputation of the university by partaking in unacceptable activities.[211]

Secondly, the university can protect itself from unnecessary legal defense costs.[212] As stated previously, the freedom from liability approach does not guarantee avoidance of legal exposure. Although the university may ultimately prevail on its claim that it does not owe a duty to the student, this defense must be proved in every case. By defining the instances in which the university technically assumes a duty, the university essentially delineates where it has not assumed a duty, and therefore, is able to prevent expensive legal costs.

Finally, the maintaining control approach allows the university to benefit from all the rewards associated with student organizations. The university can now provide an extracurricular educational experience for its students.[213] It is further able to encourage faculty-student interaction through the use of faculty advisors in these organizations. Finally, the university can influence the morals and ethics of its students.

IV. CONCLUSION

The question as to whom a university owes a duty and when the university assumes a duty remains uncertain. Until this question is answered definitively, universities must rethink their role with regard to support and recognition of student organizations.[214] Without student organizations the collegiate experience will be void of extracurricular development and the student, as well as the university, will suffer.[215] Therefore, the university should find ways in which it can support student organizations while simultaneously limiting its risk of liability.

There are two ways in which a university can effectively limit its risk of liability. The university can choose to completely avoid liability by denying any relationship between itself and its student organizations,[216] or it can choose to maintain control over its organizations but limit liability through implementation of carefully conceived regulations.[217]

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209. *Id.*
210. *Id.*
211. *Id.* at 36.
212. *Id.* at 11-12.
213. *See supra* notes 21-24 and accompanying text.
214. *See* Curry, *supra* note 8, at 94.
215. *See supra* notes 21-24 and accompanying text.
216. *See supra* notes 146-70 and accompanying text.
217. *See supra* notes 184-206.

To effectively achieve the goals of academic institutions, universities should attempt to implement the second approach—maintaining control over student organizations.[218] This method is a more definite approach and the university, the organization, the student, and the courts know exactly where the university stands in relation to the organization. The university also understands its position and is able to know when to regulate and when to withdraw.

Additionally, this program allows the university to encourage organizational development in line with university goals.[219] Many universities have specific goals which they try to achieve through the academic process. Without control over student organizations, universities risk organizations undercutting these goals. By maintaining control over the organizations, the university can better control the development of its students.

Finally, under this approach, the university is least likely to face liability. Therefore, the university will be more willing to open its doors to a variety of student organizations without the fear of opening its doors to financial liability. This will encourage development of strong student groups and an educational community which shares the same goals. Universities, then, can continue to educate their students both academically and extracurricularly.

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218. *See* Gulland & Powell, *supra* note 25, at 13.
219. *Id.*