

**Re-Submit: Final Paper**

Examining the Legal Implications of On-Campus Hazing

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*Introduction*

Hazing is a broad term which encompasses a series of activities, situations, or actions that an individual must endure in order to become initiated into a group, and it remains a critical issue for colleges around the globe (Allen, 2009, p. 13). The definition of hazing has several different points of view, and it often varies from one person to another. For example, an individual who is performing an act of hazing may define it completely different than the person who is being hazed. An administrator may perceive hazing differently than a parent or a coach. Additionally, some individuals may consider hazing to be only a physical act, while it can also be viewed as something emotional or sexual. A universal definition for hazing still does not exist. This may be influenced by the fact that there are only so many different ways to be initiated into a group (Allen, 2009, p. 13).

In 1993, Michael Olmert, an author and anti-hazing advocate, defined hazing as a formal introduction into a position or club (Nuwer, 2001, p. 71). In 1999, an alternative definition was coined by Nadine Hoover principal investigator of hazing occurrences, stating that it is any activity which would degrade, abuse, endanger, or humiliate another individual (Nuwer, 2001, p. 73). Hoover's definition challenges the common myth that participation is voluntary since there are obvious requirements which can potentially force a student to participate. Several state laws, including Texan law, emphasize "it is not a defense to prosecution if the person who was hazed had given proper consent" (Sec. 4.54) (Nuwer, 2001, p. 73). As such, having a consistent definition allows coaches and policy makers to better illustrate and pinpoint instances of hazing. Often times, hazing goes unreported because of the lack of definition set for hazing, and some individuals may not be aware they are being hazed in the first place.

*Types of Hazing*

Under New York's judicial system, it states that the striking or use of violence through any form of harm, whether abusive, insulting, shameful, or humiliating shall be recognized as hazing (Finkel, 2002, p. 228). There are different types of hazings which may involve sex, humiliation, alcohol, or violence. These can be combined with physical or mental abuse, and the physical forms of hazing may include beating, paddling, excessive exercising, and forced drug use. Psychological and mental forms of hazing are often overlooked because they are not as visible nor dangerous compared to physical hazing (Finkel, 2002, p. 231). Psychological hazing occurs where there is a sense of danger placed onto the participants or the participant may endure a high level of embarrassment. Some of these psychological forms of hazing may include verbal abuse, highly stressful situations, or commitment of a crime. Hazing remains a tradition on many college campuses; groups such as fraternities, bands, and athletics teams have maintained these traditions as a means of creating unity. By adding new elements or more extreme rituals to hazing, the forms of hazing only gets more dangerous as the traditions get passed on to each generation. Additionally, hazing is typically planned and is entirely secret. The silence is sometimes broken where there is severe injury or immediate medical attention required (Finkel, 2002, p. 232).

*Instances of Hazing and Legal Implications*

In a study made by Alfred University, researchers have found that hazing is much more prevalent than it is actually perceived. About 45 percent of students have heard of or suspected an individual being hazed on their campus (Suggs, 1999, p. 46). Nearly half of all Division 1 female athletes have been hazed. Acts of hazing often come at a high price, which affects

administrators, the institution, and its students. It affects the institution when games or the season is canceled, when property may be vandalized by the students, or when a student is being injured (Suggs, 1999, p. 46).

In the spring of 2007, a freshman who pledged at Rider University was required to drink a large amount of alcohol in order to be initiated. The freshman pledging was declared dead after pledging (Allen, 2009, p. 26). While there are other similar cases to this instance, this one particularly added controversy because the administrators were being charged for aggravating the level of hazing. When looking at the legal aspects of hazing, several educational institutions do not have restrictive anti-hazing policies since most state and federal laws do not require them to have one. Many state laws identify the role of the student, but few express the role the institution plays in preventing the hazing occurrences (Allen, 2009, p. 26).

First, looking at tort law, the victim of hazing must prove there was wrongdoing on part of the defendant who caused the injury. An intentional tort claim is often cited under hazing litigation, and several cases involve negligent inflictions of emotional distress, intentional emotional distress, negligence, as well as vicarious and premise liability (Sweet, 1999, p. 355). In *Brueckner v. Norwich University*, 730 A.2d 1086 (1999), a 24-year-old R.O.T.C. student filed a suit against the university after 16 days of ongoing hazing occurrences. A lower court identified that there was negligent supervision, intentional emotional distress, and institutional liability for assault and battery (Sweet, 1999, p. 356). The hazing episodes were committed by the upperclass R.O.T.C. members, and they were charged for their wrongdoings. In response to the previous years of hazing instances, the university had trained their cadets before the school year started so the cadets would understand the consequences of verbally and physically

harassing others. Due to the hazing incident that still happened, Brueckner was unable to eat and had a shoulder injury requiring immediate medical attention. Brueckner reported that the hazing incident forced him to leave the institution. The records indicated that the university was aware of these persistent problems but was not proactive in supervising those who were victims, nor did the university provide enough training to those overseeing underclassmen. The jury awarded the plaintiff both compensation and punitive damages as a result of the university's negligence.

There was foreseeability in the injuries because the university officials were aware that hazing was occurring on-campus, but did not take an active stance to prevent its occurrences. As agents of the university, the commander regulating the R.O.T.C. program had a duty of care to the cadets as well as the wider university community (Sweet, 1999, p. 356).

In *Brueckner v. Norwich University*, 730 A.2d 1086 (1999), the court noted the university owed a reasonable duty of care to the students, especially in part because harm was imposed on the students and there was vandalization of university property (Cokley, 2001, p. 451). The university was at fault because all four elements of negligence were evident: duty, breach of duty, causation, and damages. The university had a duty to protect the students as shown by their special relationship as a loco parentis, and the university breached their duty since the faculty advisor was aware of the hazing incident and did not take an active response to it. The next element is causation, which in this case, there was proximate cause to the incident. A proximate cause is “a cause that is legally sufficient to result in liability; an act or omission that is considered in law to result in a consequence, so that liability can be imposed on the actor” (S. Ahmadi, personal communication, February 2, 2015). This points to the foreseeability of possible injury since the faculty advisor was not proactive in preventing the hazing incident

despite his awareness of it. Damages is the final element which can be proven since the student endured a serious shoulder injury and had kidney problems making it difficult to consume food.

The issue of negligence is reviewed on a case-by-case basis, and the claim is dependent on whether the defendant owed the plaintiff a duty of care, since the defendant is considered the agent of the university. As cited under *Knoll v. Board of Regents of the University of Nebraska* 258 Neb. 1, 601 N.W.2d 757 (1999), an inquiry was established insisting that actionable negligence cannot exist if there was no initial duty to protect the plaintiff (Cokley, 2001, p. 35). The court utilized the risk-utility test when identifying the extent of the risk, relationship between the parties, the nature of the risk, the opportunity to provide care, the foreseeability of the harm as well as the policy interests within the proposed solution.

While many college administrators are not liable for hazing occurrences involving underage drinking off-campus, some universities remain accountable for protecting students from foreseeable injuries as a result of hazing due to their special relationship with the university. In *Morrison v. Kappa Alpha PSI Fraternity* 738 So.2d 1105 (1999), the court appeal had no bearing on the students who were of legal age – the outcome of the case was that the university was not sued, but there were provisions to the university policy stressing that there needed to be stronger supervision of students where there was previous instances of hazing on-campus for select fraternities (Sussberg, 2002, p. 22). Similarly in *Furek v University of Delaware* 594 A.2d 506 (1991), the court held a doctrine of loco parentis stating that the college is liable as long as, even if not directly involved, they have knowledge of its practice and historic presence (Sussberg, 2002, p. 40). This line of reasoning re-enforces how the university is still liable and that their duty to protect needs to be proactive. This case stressed how universities need to protect its

students by implement anti-hazing policies, while educating their students on the potential dangers of hazing. Further, the court has justified that schools should foresee possible risks by identifying where and how past instances of hazing occurred. This is echoed in a number of research findings indicating the importance for students to feel included, and not be isolated especially during the initiation process (Sussberg, 2002, p. 41).

In recent years, the courts have held the University of Delaware liable for student injuries as a result of hazing, even if college administrators were not directly involved nor aware of its previous or present occurrences (Allen, 2009, p. 50). The court cited that the school is liable as long as the hazing occurred on-campus and the given event is sponsored by the university; this means the faculty advisor would be required to be present at all times and would therefore be informed of any potential hazing occurrences. The court reasoned that physical injuries are especially foreseeable if there is no supervision during initiation. The court identified the connection between on-campus and off-campus hazing, which includes how schools have a tougher time regulating off-campus hazing (Allen, 2009, p. 50). However, the university policy clearly outlines that hazing is prohibited on grounds of the physical campus. While these cases increase the sensitivity of the students who take part in hazing, the standards of the institution remains clear – that they must not breach their duty to protect their students, and they need to regularly monitor the organizations and students' behavior, while assessing the values of the institution.

In *Cherie Rabel v. Illinois Wesleyan University* 514 N.E.2d 552 (1987), it has been cited that the adult, or caretaker, is responsible for the safety of its students, thereby protecting both the university and its students. This is similar to cases of hazing where the faculty advisor of

these fraternities are ultimately the agents of the university ensuring care for the students.

Negligent supervision is another element where the institution can be found vicariously liable for injuries if it is found there was negligence in supervision. The *Morrison v. Kappa Alpha PSI Fraternity* 738 So.2d 1105 (1999) ruling stated that there was contributory negligence since the students contributed to their own injury. The university was aware of what was going on and hazing was clearly being imposed; however, it can be argued that the injury sustained the plaintiff to create a legal cause, thereby placing the duty of care onto the plaintiff (Campos, 2005, 137).

Vicarious and premise liability are other elements in this case, where the institution of higher education is not the insurer of the students' health and well being (Leflore, 1987, p. 191). Judges have imposed institutional liability where the institution breached their duty of care for its students. The courts have recognized it is the institution's obligation to provide a safe environment, and administrators need to be aware of student injuries. The landlord-tenant relationship between the university and its students play a critical role in identifying the university's duty of care for its students (Leflore, 1987, p. 191).

Foreseeability is an important element when examining the legal statutes of on-campus hazing, especially when it is third party individuals unaffiliated with the university hazing students on-campus. The institution-as-landlord liability is clear evidence when looking at *Mullins v. Pine Manor College* 449 N.E.2d 331, 336 (1983), where a female student was claimed of being abducted and sexually assaulted. The court ruled the plaintiff in favor and found the university, as the landowner, being negligent (Keating, 2005, p. 104). In addition, the university had liability under premise for all injuries imposed since they are the landowner. Colleges are



considered the landowner because the institution owns all the building and facilities on-campus. The court has also recognized that the landowner owes a duty of care to students through close examination of foreseeability, especially if the university was aware of past occurrences of hazing within a specific fraternity (Keating, 2005, p. 104). By educating the student body the dangers of on-campus hazing, the university is able to show a duty of care to its students.

When examining the application of in loco parentis, colleges stress the importance of their special relationship with the students, similar to a parent and child without legal formality (Kimbrough, 1995, p. 65). Back in the 1960s, the legal system recognized that colleges and university administrators had loco parentis as a means of taking the place of the students' parents. This recognition changed from the 1960s to 1970s as students' freedom were being re-evaluating under law, which meant having different implications of students' legal protection. In *Beach v. University of Utah* 726 P.2D 413 (1986), a professor was present at an on-campus party where students were engaged with heavy alcohol consumption. As students went off-site, driving a van while wandering outside, the students began to fall from a cliff (Kimbrough, 1995, p. 65). In this case, the college was still responsible for owing a duty of care since the faculty advisor was an agent of the university. Under the doctrine of in loco parentis, the university had a duty to protect the students.

In regards to the defendants of a college, the most utilized defenses are the assumption of risk and sovereign immunity. First, in the assumption of risk, particularly looking at *Siesto v. Bethpage Union Free School District* (Drout, 2003), the court suggested student athletes to assume risks which were inherently possible within a sport; however, this does not mean the risk would be in part due to hazing (Drout, 2003, p. 535). Twenty states have produced consent to

defend this statement rightly so; however, it is important to note that several athletes do not consider hazing when signing the student-risk agreement. The problems with these statutes is that the victims do not have enough information to make informed consent, thereby limiting their "voluntary" participation in activities due to possible hazing occurrences (Drout, 2003, p. 535). Failure to participate in certain activities can make the athletes eliminated from the team, but if they take part in unacceptable hazing activities, they risk mental and physical harm.

Sovereign immunity, which is utilized to protect public employees who work in the government sector, is another legal statute that comes with on-campus hazing (Hollman, 2002, p. 20). This is often a defense that public school employees use when they are told they are liable for something out of their power or awareness. When looking at *Caldwell Griffin v. Spalding Board of Education* 503 S.E. 2d 43 (1988), a freshman football player was hazed at the summer training camp. While the school officials had previous knowledge of the football team performing hazing rituals, this particular instance showed that the administrators were immune to any hazing liability since they were not present or aware of the hazing occurrence (Hollman, 2002, p. 21).

### *Conclusion and Recommendations*

In conclusion, hazing continues to be an ongoing problem within universities since it can cause a hostile environment for its students. A recommendation is for the administrators to pay close attention to which organizations had previous instances of hazing so the faculty advisor could incorporate some form of training to ensure safety for its members. The case laws demonstrated a variety of instances where students were victims of hazing, and each case law stated that the university had a legal duty of care for these students. A second recommendation is

effectively creating a policy outlining the consequences for those who engage in physical activities that could lead to hazing or potential harm, thereby protecting both the students and employees from danger. A third recommendation is for universities to create an anonymous alert system to Department of Public Safety (DPS) at times a student may suspect someone being a victim of hazing. A fourth recommendation is to create a campus culture of inclusion so that all students feel safe with one another. This can be achieved by sharing the contact information of DPS, resident assistants, or a college administrator who is able to step in at times of distress for a student who may be in potential danger. As for bands, clubs, student organizations, fraternities, and university-sponsored activities, it is important for university officials to acknowledge institutional liability since they owe a duty of care to the students.

Administrators and all constituencies must be mindful when investigating the "duty" of standards as demonstrated by case laws, whether that means educating others on the dangers of hazing, or providing alternative methods for initiation ceremonies. Administrators need to be proactive, instead of reactive, when preventing future cases of hazing. If there is a fraternity or student group that has a reputation for ongoing hazing, it is important to be particularly cognizant of these groups and to enforce anti-hazing practices that may have worked well at other universities.

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