End to *in loco parentis*

Bradshaw v. Rawlings, 612 F.2d 135, 140 (3d Cir. 1979)

Bradshaw was a passenger in vehicle driven by classmate, Rawlings. They attended sophomore class picnic (Delaware Valley College) where Rawlings became intoxicated. Rawlings' vehicle struck a parked vehicle after leaving picnic. Bradshaw suffered cervical fracture causing quadriplegia. Bradshaw sued Rawlings, Borough of Doylestown, beer distributor and Delaware Valley College. A faculty member planned picnic with class officers and co-signed check used to purchase beer for picnic.

Third Circuit said that since Delaware Valley College regulation on alcohol use by students mirrored state law, there was no voluntary custodial relationship between college and its students.

Rabel v. Illinois Wesleyan University, 514 N.E.2d 552 (Ill. App. Ct. 1987)

Rabel was called from her dorm room by a member of Phi Gamma Delta (Fiji) fraternity at IWU. Fiji member grabbed Rabel and threw her over his shoulder. As he ran toward gauntlet of fraternity brothers, he tripped and fell, dropping Rabel. Rabel suffered skull fracture and brain concussion among other injuries.

Court found, "We do not believe that the university, by its handbook, regulations, or policies voluntarily assumed or placed itself in a custodial relationship with its students, for purposes of imposing a duty to protect its students from the injury occasioned here . . . It would be unrealistic to impose upon a university the additional role of custodian over its adult students and to charge it with the responsibility for assuring their safety and the safety of others."

Whitlock v. University of Denver, 712 P.2d 54, 55 (Colo. 1987) (en banc)

Whitlock suffered quadriplegia after falling off trampoline in the front yard of Beta Theta Pi fraternity house on university property. Whitlock was intoxicated at time of incident. Whitlock filed suit against trampoline manufacturer, the fraternity and its local chapter, and the university.

Trial court determined that 72% of negligence was attributable to university ($5,256,000) and 28% attributable to Whitlock. Trial court then granted university's motion for judgment notwithstanding the verdict finding that no reasonable jury could have found university more negligent than Whitlock. Whitlock appealed and university cross-appealed. Colorado Court of Appeals rejected the university's argument that it owed no duty to Whitlock and reinstated the jury verdict.

Colorado Supreme Court reversed judgment of Colorado Court of Appeals. Court declined to impose on the university a duty to control its students' recreational choices.

Pelham v. Board of Regents of University System of Georgia, 321 Ga.App 791 (2013)

Pelham, a student at Georgia Southern, brought suit against the Board of Regents for injuries he sustained when his football coach required young players to 'fight' larger, starting players to determine who would earn a spot on the team. Pelham claims that the fight was in violation of Georgia's anti-hazing laws and that the Board of Regents should be held liable for his injuries based on the negligent training and supervision of the coach and the coaching staff, and under the theory of respondeat superior, that the employer should be responsible for the employee's actions. The complaint was dismissed and affirmed

on appeal. The Georgia Court of Appeals held that the anti-hazing law did not create a waiver to the Board's sovereign immunity.

Yost v. Wabash College, 3 N.E.3d 509 (Ind. 2014)
Yost, a freshman pledge of Phi Kappa Psi at Wabash College, was injured when an upperclassman member of the chapter, Cravens, placed him in a chokehold after showering him in cold water. Yost filed a personal injury action against Phi Kappa Psi National Fraternity, the local chapter, Wabash College, and Cravens. Wabash and the Fraternity defendants were granted summary judgment on the argument that they owed no duty of care to Yost. Yost appealed.

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

Smith v. Delta Tau Delta, 9 N.E. 3d 154 (Ind. 2014)
Parents of Johnny Smith, a Wabash freshman pledging Delta Tau Delta, brought a wrongful death action against the national fraternity, the local chapter, the college, and two students. The National Fraternity was granted summary judgment and the parents appealed. Portions of the judgment were reversed and remanded. Delta Tau Delta appealed and the Supreme Court of Indiana vacated, finding the national fraternity was not liable for Smith's death on either an assumed-duty theory or a vicarious liability theory.

The court found that the National organization does not assume a duty of care to protect pledging students against hazing or excessive alcohol consumption. However, the court did affirm that the Fraternity must act with a reasonable duty of care in any duties it performs.

An in depth write up on *Smith* was done by Timothy Burke in the July 2014 Fraternal Law newsletter available at fraternallaw.com/library-annex/fraternal-law-newsletter

Exception to "No Duty" Rule

Mullins v. Pine Manor College, 449 N.E.2d 331 (Mass. 1983)
Student was abducted from dorm room and raped on campus. Court recognized a duty arising from "existing social values and customs" and student –college relationship. Court determined (1) that colleges have general legal duty to provide campus security and (2) that a "duty voluntarily assumed must be performed with due care."

Furek v. Delaware, 594 A.2d 506, 509 (Del. 1991)
Furek, a Sig Ep pledge, was seriously burned and permanently scarred when fraternity member poured oven cleaner over Furek's back and neck. Delaware Supreme Court found that university's policy on hazing and repeated warnings to students about the hazards of hazing "constituted an assumed duty" to protect students from injuries suffered as result of the hazing. Court rejected both Bradshaw court decision.

Liberty or Property Interest

Alton v. Texas A&M University, 168 F.3d 196 (5th Cir. 1999)
Alton, a member of FISH Drill Team, was beaten on nightly basis during hell week but the beating were not reported to University officials. He was beaten again 3 weeks later for "botching drill movement." Alton did not tell University administrators, but told a brother who told the parents. Parents contact administrator in Corps of Cadets and request investigation. Team's faculty advisor questioned Alton about rumors and Alton denied incidents had occurred. Alton then suffered another beating and was told to cut self with knife, which he did. Parents then met with Commandant of Corps of Cadets. Commandant suspended 9 cadets and ordered them of out of Corps facilities.

Alton filed complaint in US District Court alleging that he was deprived of his constitutional rights. Named in complaint were commandant, former commandant, Vice President and faculty advisor. Court granted qualified immunity. Alton appealed. Fifth Circuit court ruled that "supervisory officers, like the defendants, cannot be held liable for actions of subordinates like cadets, on theory of vicarious liability." In order for liability to attach, Alton had to show that the officials acted with deliberate indifference.

Landlord-Tenant Relationship

Nero v. Kansas State University, 861 P.2d 768 (Kan. 1993)
Nero attending summer school at KSU and resident in Goodnow Hall. KSU housing administrators had transferred another student to Goodnow Hall after student was accused of raping a female student in his former residence hall. The transferred student sexually assaulted Nero in the lounge of Goodnow Hall. Kansas Supreme Court found that KSU owed a duty of reasonable care to its student-tenants. As landlord, "a university has a duty of reasonable care to protect a student against certain dangers, including criminal actions against a student by another student . . . If the criminal act is reasonably foreseeable and within the university's control."

Knoll v. Board of Regents of the State of Nebraska, 601 N.W.2d 757 (Neb. 1999)
Knoll was forcibly taken from campus building to FIJI house at University of Nebraska where Knoll was handcuffed to radiator and given 15 shots of brandy and whiskey and six cans of beer in 2 ½ hour period. Knoll became ill and moved to 3rd floor bathroom and handcuffed to toilet pipe. Knoll attempted to escape and fell from 3rd floor window and suffered severe injuries.

FIJI house was owned by FIJI Corporation but UNL considered the facility a student housing unit.

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

See **Yost v. Wabash College, 3 N.E.3d 509 (Ind. 2014)** on p. 2 where court affirmed that lease between chapter and university did not create a special relationship.

Alcohol and Hazing

Ballou v. Sigma Nu General Fraternity, 352 S.E.2d 488 (S.C. 1986)

As part of Hell Night activities, Ballou and other Sigma Nu pledges were required to drink inordinate amounts of alcohol and other activities while encouraged and goaded by fraternity members. Ballou passed out and members were unable to wake him but left him lying face-down on couch overnight. Ballou was found dead next morning. Ballou's father sued Sigma Nu fraternity and its executive director. SC State Appellate Court found the fraternity owed a duty to care to initiates to prevent physical harm. Found fraternity responsible for damages related to Ballou's wrongful death from alcohol poisoning.

Quinn v. Sigma Rho Chapter, 507 N.E.2d 1193 (Ill. App. Ct. 1987)

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

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

Haben, freshman at Western Illinois University, was a "rookie" on the Lacrosse Club team. During initiation of new recruits (rookies), Haben and other rookies were forced to consume large quantities of alcohol, engage in strenuous physical activities, and submit to acts of ridicule and degradation including smearing their bodies, face and hair with food and other materials. Haben became intoxicated and lost consciousness. He was carried to a dorm room by a team member and laid on the floor. Haben was found dead next morning. Died from acute alcohol poisoning (BAC .34)

Trial Court dismissed the complaint against individual team members and the team because the facts did not fit narrow exception in Quinn. Appellate Court determined that case was similar to Quinn and defendants owed Haben a duty to act reasonably to protect him and that it was reasonably foreseeable and likely that the injury could result from consuming large amounts of alcohol as part of the initiation ceremony.

Coghlan v. Beta Theta Pi Fraternity, 987 P.2d 300 (Idaho 1999)

Coughlan was pledge of Alpha Phi at University of Idaho where she attended two fraternity parties (SAE/PKA and Beta Theta Pi) celebrating the end of pledge week. Two UI staff members were in attendance at second fraternity party (Beta Theta Pi) and spoke with Coughlan. Coughlan became

intoxicated and distraught. She was led back to her sorority house by a sorority sister and put to bed. Coughlin later fell from the 3rd floor fire escape on sorority house causing permanent injuries. Coughlan sued the fraternities which sponsored the parties and the university.

Idaho Supreme Court concluded that "University assumed a duty to exercise reasonable care to safeguard the underage plaintiff from the criminal acts of third persons, i.e. furnishing alcohol to underage students, of which University employees had knowledge."

Challenges to Hazing Statues

State v. Anderson, 591 N.E.2d 461 (Ill. 1992)

Criminal prosecution of Marc Anderson and 11 other members of Lacrosse Club in Nicholas Haben's death (Haben v. Anderson). Trial judge dismissed criminal charges, ruling the hazing statue was unconstitutional. State appealed directly to Illinois Supreme Court. Defendants suggested that act of ridiculing a person could subject one to criminal penalties for hazing. Court pointed out that statue requires infliction of bodily harm in addition to ridicule. Ruled that "the hazing statue does not promote arbitrary enforcement and is not unconstitutionally vague."

State v. Allen, 905 S.W.2d 874 (Mo. 1995) (en banc)

Allen was charged with 4 counts of hazing for physical abuse of Kappa Alpha Psi pledges over several days. One of pledges died as result of beatings. Allen was convicted on all 5 counts and sentenced to prison for 6 months on each count. He appealed on the basis that hazing statue vague and overbroad. Missouri Supreme Court upheld the conviction and found that statue "clearly delineates its reach in words of common understanding."

State of Texas v. Boyd & Chapa, Nos. 2043-99 and 2044-99 (Tx. Ct. of Crim. App. 2001) (en banc)

Boyd & Chapa were members of Corps of Cadets at Texas A&M University. Both were charged with hazing by the University for [student] "has firsthand knowledge of the planning of a specific hazing incident involving a student in an educational institution, or has firsthand knowledge that a specific hazing incident has occurred, and knowingly fails to report that knowledge in writing to the dean of students or other appropriate official of the institution" (TX Educ. Code 37.152). Trial court granted motion to dismiss criminal charges finding that the hazing statue was unconstitutional because compelled disclosure of such information creates risk of self-incrimination. Court of Appeals ruled the Trial Court decision appropriate. Court of Criminal Appeals reversed judgments of lower courts and indicated that appellants would have been immune from civil and criminal liability if they had reported specific hazing incident.

Title IX & Hazing

Clifford v. Regents of the University of California, No. 2:11-CV-02935-JAM-GGH, 2012 WL 1565702 (E.D. Cal. April 30, 2012)

An initiated member of Alpha Epsilon Pi brought suit against UC Davis and individual staff members alleging he was targeted for particularly offensive hazing as a non-jewish new member. Clifford alleged that among other hazing, chapter members drugged him and touched his genitals. He later resigned his membership and alleged continued harassment by fraternity members for 'breaking the code of silence' about the hazing. The case was dismissed with prejudice, in part because Clifford's continued association

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

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

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

*Both of these cases are unpublished opinions and the plaintiffs in both cases were unsuccessful. However, a reasonable interpretation of recent Title IX guidelines could infer that hazing which is gender based or sexually violent may invoke additional duties regarding investigation, adjudication and prevention and legal avenues for restitution or complaint for victims.

Settlements & Other Noteworthy Cases

DeVercelly, Rider University

A "significant" monetary settlement partially compensated the family of student Gary DeVercelly Jr. for his hazing death in 2007. The exact amount of the settlement was kept confidential, though the DeVercelly family had sought as much as $75 million.

"The agreement reinforces the commitment the University made to the DeVercelly family and its own community to reduce the risks of a similar incident reoccurring at Rider," the school said in a statement, while not admitting liability. Changes in policy have accompanied the settlement to help ensure that fraternities are more closely regulated. "Nothing will ever bring Gary back or ease the grief our family has suffered," said Julie DeVercelly, Gary's mother. "The devastation is made even worse knowing that his death was caused by hazing and should have been prevented. We sought to create meaningful changes that would honor Gary and protect others and we have done so in our settlement with Rider."

DeVercelly died following a ritual drinking test in the fraternity Phi Kappa Tau. His family named the school as partly responsible for poor oversight in a subsequent lawsuit. The family's $75 million suit filed in Superior Court named the university, three employees, the Phi Kappa Tau fraternity and several fraternity members. As part of the settlement the school agreed to ban the use of alcohol at all Greek social events in residence halls and Greek houses on campus; increase sanctions for alcohol policy and hazing violations; notify parents of alcohol violations and promote a "Good Samaritan" policy.

Carson Starkey, SAE Fraternity

The parents of a college freshman fraternity pledge who died of alcohol poisoning after fraternity hazing settled with Sigma Alpha Epsilon. Carson Starkey, 18, of Austin, Texas, was found dead after the Dec. 1, 2008, fraternity hazing. Starkey was a freshman at California Polytechnic State University, San Luis

Obispo. The student's parents, Scott and Julia Starkey, filed a lawsuit against the fraternity's Illinois-based national headquarters saying they wanted changes in Sigma Alpha Epsilon chapter operations, including hazing and alcohol use. Details of the settlement were not disclosed.

Sigma Alpha Epsilon said in a statement that it has a zero-tolerance policy against hazing. They dissolved the Cal Poly chapter after investigating the architecture-engineering student's death. Four men involved in Starkey's death were convicted of misdemeanors and got jail terms ranging from 30 days to six months. Litigation followed to determine if SAE's Insurance was required to contribute towards the member's settlement. The court found the insurance was not required to contribute because the members' actions which resulted in the injury were in violation of the Fraternity's policies.

Brett Griffin, Sigma Alpha Mu Fraternity
Brett was a freshman student at the University of Delaware and died after an alcohol filled night after including a 'family drink', in his case a bottle of southern comfort. Griffin's family brought suit against many individual members and the Fraternity, although not the University which is noteworthy given the precedent set by *Furek* in the jurisdiction. The Fraternity and many members reached settlements with the family. The chapter president and new member educator litigated and were found not guilty although the jury found that they had hazed Griffin, they did not find the hazing to be the proximate cause of his death but rather that the alcohol consumption caused his death.

Recent Criminal Cases and High Visibility Cases On the radar:

Bogenberger, Pi Kappa Alpha and NIU
Gary Bogenberger died after an alcohol fueled hazing night named 'Mom's Night' where Bogenberger and others went door to door of sorority members attempting to identify their 'pledge mom'. At each wrong door they were given alcohol. The women had puke buckets prepared, showing how much alcohol the men were expected to consume. Bogenberger lost consciousness and was placed in a closed room.

Twenty-two members were found guilty of misdemeanors, including misdemeanor hazing and received sentences that included fines, community service, supervision or conditional discharge. All students who were charged were convicted but none received jail time.

Robert Champion, Florida A&M
Robert Champion was a FAMU student and drum major in the Marching 100, FAMU's famous marching band. He was killed in a hazing event known as 'Crossing Bus C' where band members punched and kicked him as he walked down the isle of the bus. His death was ruled a homicide.

Prosecutors charged 15 band members with charges ranging from manslaughter to felony hazing and forced the school to suspend the marching band. Eleven band members received probation and community service sentences, one received a year in jail.

Champion's parents settled a suit with the bus company and driver for negligence in the failure to intervene during the hazing on the bus. The terms of the settlement have not been disclosed, leading to further tension between the Champion's and FAMU. Champion's parents also filed suit against FAMU claiming school officials knew of the hazing and the hazing culture and did not do enough to stop it.

FAMU has attempted to settle the case for $300,000, the highest financial offer they can make without special permission from the legislature, but the offer was rejected. The case is currently set to go to trial in October 2015. Champion's estate demanded $8 million in July of 2015.

Chun Deng, Pi Delta Psi at Baruch

Deng died during a Fraternity retreat in the Poconos. Pi Delta Psi, an Asian American cultural fraternity, rented a vacation home for the retreat and members forced pledges to carry backpacks full of sand, while blindfolded, and then repeatedly tackled the pledges. Deng sustained a severe head injury, did not receive medical treatment in a timely fashion, and died the following day at a local hospital. Police comments indicate that national representative may have instructed local members to remove evidence and chapter items. The family of Chun Deng has filed a civil suit against the fraternity and received permission to file a civil suit against Baruch College.

Tucker Hipps, Sigma Phi Epsilon at Clemson

Hipps died following a headfirst fall from a bridge in September of 2014 while on a run as part of a joining process for the Sigma Phi Epsilon chapter. Two civil suits have been filed and claim that Hipps died over a failure to bring the required amount of McDonald's breakfast as part of a pledge program. Hipps' parents said they filed the lawsuits "in the hopes that change will happen and that no other parent will feel the pain they have been forced to endure. Tucker lost his life, but we must not let it be vain." Along with the University, and the Fraternity, Delaware Congressman John Carney's oldest son is named as a defendant as an alleged leader of the run who failed to notifiy anyone or find Hipps following the fall from the bridge.