

### **The Wild Fraternity Party Problem – problem 3**

SAE's Motion to Dismiss: No duty because Dram Shop statute precludes claim by Coughlin. The statute by its terms seems to apply to social hosts, because says "sold or otherwise furnished" alcohol. The statute by its terms applies to civil tort suits, and says no claim may be brought on behalf of "any person" which would seem to include the intoxicated person herself.

Coughlin's argument: exception (a) applies - the statute does not cut off the right to bring a claim when the alcohol was given to a minor and the entity furnishing the alcohol "ought reasonably to have known that the intoxicated person was younger than legal drinking age." This argument shows an interplay between the asserted grounds of negligence and the duty issue. Coughlin's assertion of negligence is that the bracelet system for designating underage drinkers was inadequate, perhaps deliberately so, and given the rather obvious way in which bracelet wearers were going into bathrooms with bracelets and emerging without them, SAE should reasonably have known that it was serving to an underage person.

This motion and response presents the policy issue of whether tort law should recognize a duty to prevent an intoxicated minor from injuring herself. Which result — finding a duty, or leaving Coughlin to bear her own injuries — will most discourage underage drinking and deter easily evaded minor-ID practices such as the removable bracelet system used by SAE?

Many of you raised the question of whether she's an invitee or licensee. But does it matter? Only if the harm is the result of a defect on the premises, rather than an activity. What's the breach? Serving alcohol? Is that an activity or a defect? If the former, you don't need to engage in a landowner limited duty analysis at all.

You could also look at it in terms of landowner duty to protect against criminal activity on the premises, except that it's the landowner's own criminal activity (serving alcohol to minors) that we're worried about here. Perhaps if you thought the University was the landowner and the fraternity the alcohol-server, then there would be more reason to engage in a discussion about prior similar incidents etc. But even there, the harm comes about off the premises – D will argue that they could not possibly foresee that.

Breach here follows naturally from the above discussion. If the statute creates a duty, does it also create breach under a theory of negligence per se? P is in the class to be protected (or is the purpose to protect others from underage drivers...) and she'll argue the harm is physical injury as a result of being drunk. If the statute precludes a duty you can't go on to argue common-law breach. But you could bolster the arguments for finding she comes within the exception by pointing to the Kelly v. Gwinnell line of cases – but even those generally apply just to a 3<sup>rd</sup> party, not the drunk person. Under regular neg principles: Foreseeable harm? Sure given history, setting, existence of precautions, etc. Untaken precautions? Give bands to overage students, check i.d. when getting drinks, etc. Low cost, effectiveness, etc. Not a big argument re breach.

Causation: would she have been hurt even if precautions had been taken? She'll need to argue it was drunkenness that made her fall, not just dark, slippery etc.

Scope of liability: is she a foreseeable victim? Probably. Foreseeable type of harm? Sure. D will argue no because harm happened by falling, not driving.

Comp fault: yes, clearly some fault was hers for excessive drinking, not getting a ride or company going home, cutting band off, etc.

University's Motion to Dismiss: No affirmative duty to act to protect another unless a special relationship exists. She could argue that U. is acting in *loco parentis* and that's enough. However, U. will argue that college students, even if legally minors, are old enough to look out for themselves, and the days when universities are considered to act in *loco parentis* are long past. There are two leading cases holding that the university-college student relationship is not the sort of special relationship that leads to a tort duty to protect. *Bradshaw v. Rawlings*, 612 F.2d 135 (3d Cir. 1979); *Beach v. University of Utah*, 726 P.2d 413 (Utah 1986). *Beach* involved an underage student who got intoxicated on a university sponsored field trip and fell off a cliff.

Coughlin's strongest argument is that the court does not need to decide whether university/college student is a "special relationship," because there is another basis for finding a duty. She can argue that the University voluntarily assumed a duty when it adopted policies and then posted University personnel at the SAE party to ensure that the University policy against underage drinking would be enforced. She can assert that there is sufficient evidence of negligence by the university supervisors to let the case go to the jury. They observed students going into the bathroom with bracelets, and emerging without them, which should have made it obvious that underage people were evading the identification system. A University representative also joined in the chugging contest, thus tacitly endorsing or encouraging excessive drinking.

Alpha Phi's Motion to Dismiss: They will argue no duty to aid or protect Coughlin because there is no special relationship between the sorority and its pledge; Alpha Phi did not assume a duty to protect Coughlin just because it designated a more senior student as her "guardian angel" advisor. Clark, Coughlin's designated guardian angel, specifically disavowed any aid to Coughlin when she told her she could not accompany her that evening. Thus, there was no assumption of duty, and nothing upon which Coughlin could reasonably rely.

Coughlin's arguments in response: the relationship between a sorority or fraternity and its freshman pledges should be treated as a special relationship sufficient to impose a duty to protect. These institutions have a great deal of influence over their pledges, and pledges look to them for guidance and advice, especially with regard to social life on campus. Finding a special relationship would enhance the policy goal of making fraternities and sororities more responsible for actions of their members, and thus help

curb the serious problems of binge drinking on campus, particularly at fraternity and sorority parties.

Even if there is no special relationship, by providing a guardian angel and then encouraging Coughlin to attend the SAE party and engage in underage drinking, Alpha Phi assumed a duty and negligently performed it. What was the purpose of the guardian angel system if not to look out for, advise, and aid freshman pledges and protect them against the temptations and known drinking hazards of Rush Week?

This problem is based on *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 987 P.2d 300 (1999). In the actual case, the court held that the intoxicated person could not bring an action under the Dram Shop law, even though a minor. The court also held that there was sufficient evidence of a voluntary assumption of a duty to aid or protect, and allowed the claims against the University and Alpha Phi to go forward. Ironically, the statute had the effect of cutting off liability for one of the most responsible actors – the fraternity that deliberately devised an ID system that was easy for minors to evade, and then encouraged them to chug beer – while leaving arguably less responsible parties subject to suit.