

Extra Legal

Do Colleges and Universities Have a Duty to Help? California and Massachusetts Lead the Way

*By Alberto Bernabe**

I. Introduction

The general common law does not recognize a duty to help or to control the conduct of others.¹ However, over time, courts and the Restatement of Torts have recognized limited duties in certain circumstances. Some of the most commonly accepted exceptions to the general rule are based on the existence of a special relationship between the person alleged to have a duty to help and the person in need of help.² Traditionally, a special relationship exists when one party depends on the other for protection and the other party has the ability to provide the needed protection.³ For this reason, whether a relationship constitutes a

* Professor of Law, The John Marshall Law School (Chicago). The author thanks the administration of The John Marshall Law School for its support in the preparation of this article.

¹ RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL AND EMOTIONAL HARM § 37 (AM. LAW INST. 2018) (stating that there is no duty unless a court determines a specific affirmative duty applies).

² *Id.* §§ 40-41.

³ *See* RESTATEMENT (SECOND) OF TORTS § 314A cmt. B (AM. LAW INST. 1965) (stating that the law appears to be working slowly toward a recognition of a duty to aid or protect in any relation of dependence or of mutual dependence.).

special relationship which creates a duty to help or protect has usually been interpreted narrowly. Originally, the concept was limited to the relationship between common carriers and their passengers, and between innkeepers and their guests.⁴ Yet, for a variety of reasons, the notion of special relationships has been extended to include other types of relationships such as those between landlords and tenants, and commercial establishments and their customers.⁵

Likewise, jurisdictions have shifted their approach on whether colleges and universities have a special relationship with their students. Before the 1960s, higher education institutions were considered to stand *in loco parentis* to students, and thus, as exercising control over the students who were, in turn, thought to be in the schools' care.⁶ For this reason, courts often found schools to have a duty to protect students.⁷ However, courts became more reluctant to impose a duty to help after students began to seek greater independence during the civil rights movement of the 1960s. Following this period, colleges and universities have increasingly treated students as adults.⁸ After all, college students are presumed to be older and more mature than high school students and institutions of higher education have less control over their activities and less ability to supervise them than do high schools.⁹ Accordingly, courts

⁴ *Id.*

⁵ *Id.*; RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL AND EMOTIONAL HARM § 40.

⁶ Peter F. Lake, *The Rise of Duty and the Fall of In Loco Parentis and Other Protective Tort Doctrines in Higher Education Law*, 64 MO. L. REV. 1, 3-11 (1999); Brett A. Sokolow & W. Scott Lewis, *College and University Liability for Violent Campus Attacks*, 34 J.C. & U.L. 319, 321 (2008); Kristen Peters, *Protecting the Millennial College Student*, 16 S. CAL. REV. L. & SOC. JUST. 431, 433 (2007).

⁷ See Lake, *supra* note 6, at 6; Sokolow & Lewis, *supra* note 6, at 321; Peters, *supra* note 6, at 434-35.

⁸ Lake, *supra* note 6, at 9; Sokolow & Lewis, *supra* note 6, at 321-22; Peters, *supra* note 6, at 436-38.

⁹ See, e.g., *Hegel v. Langsam*, 273 N.E.2d 351 (Ohio Ct. Com. Pl. 1971) (explaining that a university is neither a nursery school, a boarding school, nor a prison and used by several Torts textbooks as an example of the view that universities do not have a general duty to protect students).

began to decline to impose a general duty to protect when adult students were injured on campus, particularly as a result of the students' own decisions to engage in potentially risky behavior.¹⁰

However, this trend seems to be in the process of reversing again, or at least evolving toward a modern middle ground. The Restatement (Third) now includes the relationship between a school and its students as one that gives rise to a duty to help.¹¹ However, because there are many different types of schools, whose students also vary in terms of age and maturity, the Restatement recognizes that there must be differences in analysis depending on whether the case involves elementary schools or high schools, as opposed to colleges and universities. As it explains in a comment to the section that recognizes duties based on special relationships, "because of the wide range of students to which it is applicable, what constitutes reasonable care is contextual—the extent and type of supervision required of young elementary-school pupils is substantially different from reasonable care for college students."¹² Thus, according to the approach of the Restatement (Third), while a school does not have an automatic, broad duty to protect students, certain duties may be triggered if there is a special relationship between the institution and an individual based on the foreseeability of harm.¹³

10 Sokolow & Lewis, *supra* note 6, at 322; *see, e.g.*, *Emery v. Talladega Coll.*, 169 F. Supp. 3d 1271, 1287 (N.D. Ala. 2016) (holding that a special relationship did not exist between private college and student, and thus, college did not have duty under Alabama law to protect student).

11 The Restatement (Third) also lists as special relationships the relationships between common carriers and passengers, innkeepers and guests, business and those who are lawfully present on their premises, landlords and tenants and limited instances involving employers and employees and custodians and those in their custody. RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL AND EMOTIONAL HARM § 40.

12 *Id.* at cmt 1.

13 *Compare Doe v. Baylor Univ.*, 240 F. Supp. 3d 646, 667 (W.D. Tex. 2017) (finding that university had no special relationship with its students who were allegedly sexually assaulted on campus, as would give rise to duty to protect them from foreseeable criminal acts), *with Hernández v. Baylor Univ.*, 274 F. Supp. 3d 602, 618–21 (W.D. Tex. 2017) (holding that university owed female student a duty of reasonable care to protect her from sexual assault by a university football player if the university knew that the

This apparent shift toward imposing a limited duty toward students is not necessarily new,¹⁴ but given the rising tide of gun violence in schools, it is an increasingly important issue for schools of all levels.¹⁵ Notably, two very recent cases, decided within just a few weeks of each other, illustrate this broadening of the limited duty toward students, and are likely to become influential in the development of this area of law.

II. A duty to protect from the conduct of others

In the first of these cases, *The Regents of the Univ. of California v. Superior Court*, decided March, 2018, the Supreme Court of California held that there is a special relationship between colleges and universities and their enrolled students, which creates a limited duty to help and protect during school-sponsored activities over which the institution has some measure of control.¹⁶

The facts of the case are long and detailed, but the short version of the story is that, over more than one semester, a certain student at the University of California Los Angeles (UCLA) suffered from hallucinations and other mental health issues, and behaved erratically and threateningly toward other students. The problematic behavior was known to some students, teaching assistants, professors, and members of the administration of the university. At different points in time, members of the administration and other staff of the university took action to try to

football player had previously been cited for sexual assault and knew that six other students at university had reported being sexually assaulted by the player, so that the risk and likelihood that the player would sexually assault another student was foreseeable).

¹⁴ Peters, *supra* note 6, at 447 (there have been sporadic rulings that expand a university's duty).

¹⁵ See *id.*; Helen Hickey de Haven, *The Elephant in the Ivory Tower: Rampages in Higher Education and The Case for Institutional Liability*, 35 J.C. & U.L. 503 (2009); Jane A. Dall, *Determining Duty in a Collegiate Tort Litigation: Shifting Paradigms of the College-Student Relationship*, 29 J.C. & U.L. 485 (2003).

¹⁶ Regents of Univ. of California v. Superior Court, 413 P.3d 656 (Cal. 2018).

help the students involved, including moving the problematic student away from his dormitory, and providing him with counseling and medical services. The student's response to these efforts was inconsistent: he was not always cooperative, he did not participate in counseling consistently, he refused some of the services offered, and he continued to be problematic for a long period of time. After months of such behavior, the student unexpectedly and without provocation attacked another student with a knife at the end of a class, causing her severe injuries.¹⁷ The victim of the attack sued the attacker and UCLA. Against UCLA, she argued that because of the special relationship between the university and its students, the university owed her several duties, including (1) a duty to take reasonable protective measures to ensure her safety against violent attacks and otherwise protect her from reasonably foreseeable criminal conduct; (2) a duty to warn her as to such reasonably foreseeable criminal conduct on its campus and in its buildings; and, (3) a duty to control the reasonably foreseeable wrongful acts of third parties and other students.¹⁸ In response, UCLA filed a motion for summary judgment arguing that colleges have no duty to protect their adult students from criminal acts.¹⁹ The court denied the motion and UCLA challenged the court's ruling before the California Court of Appeal for the Fourth District.²⁰

A divided panel of the Court of Appeal reversed over the dissenting opinion of a judge who argued that colleges do have a special relationship with their enrolled students, "at least when the student is in a classroom under the direct supervision of an instructor" and that, therefore, colleges

¹⁷ *Id.* at 660–62.

¹⁸ In the alternative, the plaintiff argued that even if UCLA did not owe those duties based on a special relationship, UCLA had assumed a duty of care by undertaking to provide campus-wide security. *Id.* at 662. In the end, however, because the court found that UCLA did owe a duty based on the special relationship, the court did not address this argument. *Id.* at 674.

¹⁹ *Id.*

²⁰ *Id.* at 662.

have a duty to protect against foreseeable threats of violence in classrooms.²¹ The plaintiffs appealed and the Supreme Court of California agreed with the dissenting judge, holding that there is a duty to protect students, while ultimately leaving undecided the issue of whether there is a duty to control the perpetrator.²²

The opinion of the Supreme Court of California starts by making clear that there is no duty to help unless the plaintiff can establish that the defendant had a special relationship toward the plaintiff that would justify imposing a duty on the defendant.²³ The court also explains that even if there is a duty, the duty must be limited.²⁴ Thus, this limited duty cannot be owed to the public at large; the duty would only be owed to those with whom the defendant has the special relationship that initially imposes the duty.

With this as the general background for the analysis, the court admits that there are differences between high schools and colleges, but decides that those differences do not lead to a different conclusion.²⁵ According to the court's analysis, the cases involving elementary schools and high schools have held that a duty is owed because the relationship between the school and the students is characterized by mandatory attendance and the comprehensive control that the school can exert over students.²⁶ Moreover, downplaying the differences at the college level, the court found that even though college students have more freedom and are usually legal adults, the students remain somewhat vulnerable as they are still learning how to navigate the world as adults and are, therefore, dependent on their college communities to provide structure, guidance,

²¹ *Id.* at 662-63.

²² *Id.* at 664.

²³ *Id.*

²⁴ *Id.* at 668.

²⁵ *Id.* at 667-68.

²⁶ *Id.*

and a safe learning environment.²⁷ Given this conclusion, and the fact that colleges have both control over the college community environment and the ability to protect students through the use of monitoring and discipline, the court concluded that it was justified to find that colleges have a special relationship with their students.²⁸

However, the court found that the fact that there is a special relationship does not create a duty to eliminate all risks or that the duty is owed to everyone. The court determined that colleges are in a special relationship with their enrolled students only, and that the duty to protect is limited to the context of school-sponsored activities over which the college has some measure of control.²⁹ The court also noted that this duty is not a duty to prevent violence, which would be impossible to meet.³⁰ Instead, the court recognized a limited duty to take reasonable steps to protect students when the university becomes aware of a foreseeable threat to their safety.³¹

Applying its conclusions to the facts of the case, the Supreme Court of California remanded the case to the California Court of Appeal for the Fourth District so it could decide whether triable issues of material fact remained on the questions of breach of the duty. However, it is important to note that the Court pointed out that the appropriate standard of care for judging reasonableness of a university's actions remained an open question which the parties were free to litigate on remand.³² Thus, UCLA lost the argument on whether the court should impose a duty, but it is possible that UCLA may not be liable if it is determined that the school did not breach its duty.

²⁷ *Id.* at 668.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 673.

³¹ *Id.*

³² *Id.* at 674.

The opinion is well-reasoned and seems to strike a good balance between the absence of possible liability that resulted from finding that colleges and universities do not operate *in loco parentis* like schools for younger children do and an open ended duty to protect everyone from everything that can pose a risk to the students. Yet, the opinion is not without problems. For example, while the majority opinion describes the contours of the duty it recognizes as limited “to tak[ing] reasonable steps to protect,” it creates confusion by suggesting that the appropriate standard of care for judging the reasonableness of a university’s actions remains an open question.³³ One would think that the statement “to take reasonable steps to protect” is a reference to the generally accepted standard of care in negligence cases, which requires an evaluation of whether the defendant acted as a reasonable person would have under the circumstances.³⁴ Yet, the court’s statement on remand seems to suggest there are other possible ways to evaluate the conduct of the defendant without providing any guidance as to what they might be.

Additionally, although the facts of the case involve the conduct of a student that caused an injury to another student, the formulation of the duty by the court does not limit the duty to protecting students from other students. The duty can be interpreted to require the protection of students from strangers or any third party. Thus, a college or university would have a duty to take reasonable measures to protect its students from attacks by random persons who might enter a classroom or another school facility with a gun, something that might be very difficult to do in open campuses.³⁵ More importantly, as explained in a separate concurring opinion by Justice Chin, the language used by the court to describe the duty may be too broad, given the amorphous nature of the holding that

³³ *Id.* at 673–74.

³⁴ *Id.*

³⁵ See Hickey de Haven, *supra* note 15, for a broad discussion of issues related to attacks on colleges and universities..

institutions of higher education “have a special relationship with students while they are engaged in activities that are part of the school’s curriculum or closely related to its delivery of educational services.”³⁶ Justice Chin objected to this broad language for three reasons. First, there was no need to decide if the duty extends beyond the classroom because the attack in this case occurred in a classroom.³⁷ Second, the extent of a university’s control in a non-classroom setting varies considerably because activities outside the classroom differ in potentially significant ways.³⁸ Third, the majority’s conclusion can create confusion because it offers no guidance as to which non-classroom activities qualify as either “curricular” or “closely related to [the] delivery of educational services” or as to what factors are relevant to this determination.³⁹ Thus, rather than clarify the future application of the duty it recognizes, the language used opens the door to future litigation.

III. A duty to protect students from themselves

As stated above, in *The Regents of the Univ. of California v. Superior Court*, the Supreme Court of California recognized a limited duty to take reasonable steps to protect students when the university becomes aware of a foreseeable threat to their safety.⁴⁰ Should this duty apply to cases involving students at risk of self-inflicted injuries? This is the question addressed by another recent case, *Nguyen v. Massachusetts Institute of Technology*,⁴¹ in which the court addresses whether the special relationship between schools and students entails a duty to protect

³⁶ *Regents of Univ. of California*, 413 P.3d at 667.

³⁷ *Id.* at 675.

³⁸ *Id.* Consider, for example, activities held outdoors, band or theater rehearsals, and social events, where students interact informally with much less supervision from university personnel.

³⁹ *Id.*

⁴⁰ *Id.* at 673-74.

⁴¹ *Nguyen v. Mass. Inst. of Tech.*, 96 N.E.3d 128 (Mass. 2018).

students from risks they pose to themselves.

Nguyen, decided about two months after *Regents*, deals with whether a college or university can be held liable when a student ends his or her own life. This case involved a twenty-five-year old graduate student at MIT's Sloan School of Management. As in *Regents of the Univ. of California*, the facts of the case are long and detailed but can be summarized briefly. After his first academic year at MIT and two years before his death, the student felt he was failing his classes and asked an MIT Ph.D. program coordinator for assistance. The coordinator referred the student to MIT's mental health and counseling service. Over the next two years, the student met sporadically with different members of the MIT administration and medical services, but consistently complained that he did not believe his problems had anything to do with mental health and declined medical treatment. During a number of those meetings, the MIT staff asked the student if he was considering committing suicide. He consistently said he was not. At one point, however, he admitted that he had a long history of depression and that he had attempted to commit suicide twice in the past. He also admitted that he was seeing a psychiatrist not associated with the university. In fact, from the time he moved to Massachusetts to the time of his death, the student consulted at least nine private mental health professionals. Importantly, however, none of them indicated that he was at an imminent risk of committing suicide, including a doctor who saw the student five days before his death.⁴² Yet, on June 2, 2009, the student took his own life by jumping off a building. Two years later, the student's father filed a wrongful death action against MIT.⁴³

⁴² *Id.* at 132–38.

⁴³ This was not the first time a lawsuit had been filed against MIT based on a student's suicide. In 2005, the parents of a student who committed suicide while at MIT sued the university and several individual members of the administration and medical staff. The lower court granted a motion for summary judgment in favor of the university but allowed the claims against the university administrators to proceed. Soon after that, however, the case was settled. *See generally* Ann MacLean Massie, *Suicide on Campus*:

Eventually, the trial court granted a motion for summary judgment in favor of MIT and the father appealed.⁴⁴

On appeal, the Massachusetts Supreme Judicial Court affirmed. The court held that a university has a special relationship with its students and that the relationship gives rise to a limited duty to take reasonable measures to protect students from self-harm. However, the court held that the duty only applies if the university has actual knowledge that the student had attempted to commit suicide while enrolled at the university or recently before matriculation, or if the university has knowledge of the student's stated plans or intentions to commit suicide.⁴⁵

To reach this conclusion, the court used an analysis similar to the one discussed by the Supreme Court of California in *Regents*. It begins by explaining that, because there is no general duty to rescue or to protect others, there is no general duty to prevent another from committing suicide.⁴⁶ However, there may be a duty to take reasonable measures to prevent suicide in cases of special relationships between the parties in a

The Appropriate Legal Responsibility of College Personnel, 91 Marq. L. Rev. 625 (2008).

⁴⁴ *Nguyen*, 96 N.E.3d at 138.

⁴⁵ *Id.* at 142. This is not an entirely unprecedented conclusion. There are a few cases that have decided the question similarly, although they seem to be based on the notion that the defendant had already assumed a duty by providing the student the initial services that created the knowledge of the potential risk of self-harm. *See, e.g.*, *Leary v. Wesleyan Univ.*, 47 Conn. L. Rptr. 340 (Conn. Super. Ct. 2009) (explaining that there is no duty to protect an individual from self-harm unless a special relationship exists between the two parties but that a question of material fact existed on whether such a relationship was created when the student was in the custody or control of the university's public safety officers); *Schieszler v. Ferrum Coll.*, 236 F. Supp. 2d 602 (W.D. Va. 2002) (explaining that there is no affirmative duty to protect another absent a special relationship between the parties, but that it could be found that such a special relationship existed because the defendants had required the student to seek anger management counseling before permitting him to return to school for a second semester and there was evidence suggesting the defendants believed the student was likely to harm himself).

⁴⁶ *Nguyen*, 96 N.E.3d at 139 (citing W.L. PROSSER & W.P. KEETON, TORTS § 56, at 375 (5th ed. 1984)) (“[T]he law has persistently refused to impose on a stranger the moral obligation of common humanity to go to the aid of another human being who is in danger, even if the other is in danger of losing his life.”)

custodial relationship, such as the relationship between jails and hospitals and those in their charge,⁴⁷ if the defendant knew, or had reason to know, of the decedent's suicidal tendency.⁴⁸ The question for the court, therefore, was whether a college or university should be considered to have a special relationship with its students equivalent to that of the parties in a custodial relationship which would create a limited duty to protect against suicide.⁴⁹

Similar to the Supreme Court of California in *Regents*, the Supreme Judicial Court of Massachusetts begins its analysis by recognizing that even though the Restatement (Third) includes the relationship between a school and its students among those that create a duty to help, there are a wide range of schools “from elementary to graduate school” and great differences in the scope of student-school relationships.⁵⁰ Yet, regardless of the differences, the court found that a number of factors, most importantly the element of foreseeability, lead to the conclusion that the relationship between a college or university and its students should give rise to a limited duty to protect the students from foreseeable harm. The court considered, for example, the university's involvement in aspects of students' lives, the level of mutual dependence between students and their university, the degree of certainty of harm to the student, the burden upon the university to take reasonable steps to prevent the injury, the moral blameworthiness of the university's conduct in failing to act and the social policy considerations involved in placing the economic burden of the loss on the university.⁵¹ Ultimately, the court emphasized that in analyzing

⁴⁷ *Id.*

⁴⁸ *Id.* at 139-40.

⁴⁹ Other courts have held it does not. *See, e.g., Jain v. State*, 617 N.W.2d 293 (Iowa 2000) (affirming lower court finding that no legally recognized special relationship existed between the university and the student that created a legal duty to the student to prevent him from harming himself).

⁵⁰ *Nguyen*, 96 N.E.3d at 140.

⁵¹ *Id.* at 140-44.

whether a duty to prevent suicide falls within the scope of the complex relationship that universities have with their students, the foremost factor to consider is foreseeability.

The *Nguyen* court's focus on foreseeability points to an important difference in approach between Massachusetts and California. In *Regents*, the Supreme Court of California first decided whether the elements of the relationship between the institution and the students created a special relationship, and then determined whether it would be good public policy to impose a duty. In contrast, the Massachusetts Supreme Judicial Court in *Nguyen* decided that there is a special relationship between the institution and the students *because* it would be good public policy to impose a duty. In the end, however, these two slightly different approaches to the question resulted in the same conclusion. Both courts decided colleges and universities have a limited duty to protect their students.

The factors that limit the extent of the duty are also similar in both cases. In *Nguyen*, the court held that the duty is limited to cases in which the defendant has knowledge or reason to know of the risks involved and also that the duty is limited in scope: it is not a generalized duty to prevent suicide, and it is not owed to the public at large. Employees of a university who are not trained to identify the warning signs of suicide are not expected to discern suicidal tendencies absent a student's stated plans or intention to commit suicide.⁵² Even a student's generalized statements about suicidal thoughts or ideation would not be enough to trigger the duty.⁵³ In fact, the court affirms that knowledge of a student's suicidal ideation would not trigger the duty absent any stated plans or intentions to act on such thoughts.⁵⁴ However, the requirement that the institution have actual knowledge of a student's suicide attempt that occurred while

⁵² *Id.* at 144.

⁵³ *Id.*

⁵⁴ *Id.*

enrolled at the university or recently before matriculation, or of a student's stated plans or intentions to commit suicide, ensures that that the probability of injury is sufficient to justify imposition of a duty on the university as the need to take reasonable action is foreseeable.⁵⁵

Having concluded that the relationship between a college or university and its students gives rise to a limited duty to help prevent a suicide, the court in *Nguyen* does something the court in *Regents* failed to do. The court in *Nguyen* offers some guidance as to the analysis needed to determine if the duty was breached. For example, the *Nguyen* court stated:

[R]easonable measures by the university to satisfy a triggered duty will include initiating its suicide prevention protocol if the university has developed such a protocol. In the absence of such a protocol, reasonable measures will require the university employee who learns of the student's suicide attempt or stated plans or intentions to commit suicide to contact the appropriate officials at the university empowered to assist the student in obtaining clinical care from medical professionals or, if the student refuses such care, to notify the student's emergency contact. In emergency situations, reasonable measures obviously would include contacting police, fire, or emergency medical personnel. By taking the reasonable measures under the circumstances presented, a university satisfies its duty.⁵⁶

When the court applied its analysis to the facts of the case, however, it ruled that, under the circumstances, MIT did not have a duty to protect, or, if there was a duty, that it was not breached. To conclude that there was no duty owed, the court began by pointing out that the student "was a twenty-five year old adult graduate student living off campus, not a young

⁵⁵ *Id.*

⁵⁶ *Id.* at 145.

student living in a campus dormitory under daily observation.”⁵⁷ However, because the same could be said of many university students, one would expect more support for the court’s conclusion. Accordingly, the court notes that the student “never communicated by words or actions to any MIT employee that he had stated plans or intentions to commit suicide, and any prior suicide attempts occurred well over a year before matriculation.”⁵⁸

As in *Regents*, the opinion is not without problems. For example, the court does not discuss whether a student’s decision to commit suicide would operate as a superseding cause that would defeat the plaintiff’s argument of proximate cause.⁵⁹ This is important because many jurisdictions still follow the traditional view that a decision to commit suicide by a person with awareness of his or her actions would preclude the defendant from being held liable for the decedent’s death.⁶⁰

Moreover, the *Nguyen* court’s formulation of a college or university’s duty to students is not entirely consistent. At one time the court refers to the duty as a duty to take reasonable measures to protect the student from self-harm,⁶¹ but elsewhere the court refers to the duty as a duty to take reasonable measures to prevent suicide.⁶² These two formulations of the duty are different and, given the court’s reasoning, it seems that the second formulation, a duty to take reasonable measures to

⁵⁷ *Id.* at 146.

⁵⁸ *Id.*

⁵⁹ Many cases have been dismissed based on this principle. *See, e.g., Jain*, 617 N.W.2d at 293 (considering suicide a deliberate, intentional, and intervening act that precludes another’s responsibility for the harm).

⁶⁰ VINCENT R. JOHNSON, *MASTERING TORTS* 141 (4th ed. 2009). For two contrasting approaches to the question, see *Turcios v. DeBruler Co.*, 32 N.E.3d 1117, 1126 (Ill. 2015) (applying what the court calls “the general rule that suicide is unforeseeable as a matter of law”), and *In Re Estate of Christina Marie Cotten*, 2017 WL 4083645 (Tenn. Ct. App. 2017) (holding that reasonable people can disagree as to whether suicide is foreseeable under the circumstances).

⁶¹ *Id.* at 142-43.

⁶² *Id.* at 139, 142.

prevent suicide, is the more accurate description. The first formulation, a duty to take reasonable measures to protect the student from self-harm, is too broad and onerous. Protecting someone from “self-harm” could include taking measures to make sure a student does not drink too much alcohol at a party or begin using or abusing drugs, which is precisely the type of conduct for which courts traditionally are reluctant to impose liability on colleges and universities.⁶³

In addition, the court chose not to address the issue of whether imposing a duty may have unintended negative consequences. For example, it could cause professors and others without mental health expertise to overreact, which in turn could discourage students from coming forward with their problems to those who could offer help. Finally, the court did not discuss the fact that 18 colleges and universities urged the court to reject the plaintiff’s claim, arguing that a decision in favor of the plaintiff could have devastating consequences.⁶⁴

IV. Conclusion

Starting in the 1960s, courts became reluctant to recognize that colleges and universities have a duty to protect students, but it seems there is now a new shift toward institutional accountability. No one would disagree with the proposition that college campuses should be safe for students, but the question remains as to what degree the educational institutions should be liable when students suffer injuries caused by others or by themselves. In an attempt to come up with answers, courts have tried to balance policy considerations and traditional negligence rules. *The*

⁶³ Dall, *supra* note 15, at 492–99.

⁶⁴ In a footnote, the Court merely acknowledged the fact that several Amicus briefs had been filed in the case. The educational institutions represented in those briefs were: Amherst College, Bentley University, Berklee College of Music, Boston College, Boston University, Brandeis University, College of the Holy Cross, Emerson College, Endicott College, Harvard University, Northeastern University, Simmons College, Smith College, Stonehill College, Suffolk University, Tufts University, Williams College, and Worcester Polytechnic Institute. *See Nguyen*, 96 N.E.3d at 128 n.3.

Regents of the Univ. of California v. Superior Court and *Nguyen v. Massachusetts Institute of Technology* are the most recent examples of how courts are trying to express this balance.

In these two cases, the courts did not attempt to return the state of the law to a recognition that colleges and universities stand *in loco parentis* to their students, and therefore, have a broad duty to protect them, but instead used the notion of foreseeability to extend a limited duty to protect from foreseeable risks. This approach is logical and follows traditional torts rules. However, it does not always help clearly define the limits of the limited duty. As usually happens in cases like these, more litigation will have to occur to define both the contours of what is a foreseeable injury in a college campus and the extent to which the educational institution should be responsible for protecting the students. Thus, while it can be argued that colleges and universities have a relationship with members of the campus community, and that the relationship may give rise to a duty to protect them from injury, the extent of that duty remains a work in progress.