“You’re kidding, right?  We can get sued for that?”
A primer on criminal & civil liability

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Welcome!

I’m David Westol
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We’ll review among other topics...

- Criminal Law
- Civil Law
- Facilitation suggestions
- Cases
- You as professionals
- Insurance
- Most importantly: Your questions
“The law is a vast, undulating sea of gray bordered by a rigid steel framework”

-Many a law professor
Facilitation
Criminal Law/Procedure

• Statutory—State or local laws or ordinances
• If convicted: Fines, costs, restitution
• + jail or prison
• “Beyond a reasonable doubt” VHS
• Many safeguards in procedure
Criminal cases: Victim*

- Misdemeanor v. Felony
- Arrested/Arraigned = mug shots
- Felonies usually require a grand jury or a preliminary examination but “Probable Cause” is not a high standard.

*(Doesn’t always apply)*
Mug shots: Silence is the pro forma response
Civil Law & Procedure

• State case law & procedure
• Usually sued for monetary compensation
• Much lighter burden: “Preponderance of the evidence”—51% v. 49%
• Insurance, personal assets, liquidation of assets
Vast majority of cases v. universities, chapters, national organizations and members are based upon Negligence
Four Elements

• Duty
• Breach of Duty
• Proximate Cause or Nexus: Relationship
• Damages, which can be physical and psychological...loss of consortium, inability to work...among many other forms.
Civil Procedure: 5 stages

• Pleadings
• Interrogatories
• Production* (my notes)
• Deposition
• Trial or resolution
Things to Remember

• Vast majority of cases settle
• Time-consuming: 18-36 months
• “Boulder in the road”
• Π demands, Δ responds
• Document retention
Pushback from our students usually includes:

- Double jeopardy
- Criminal cases with a verdict
- Can you be sued in civil law and prosecuted for the same act?
- Oh, yeah.
Facilitating discussions

- Call on different people
- “No wrong answers”
- Steps to the next level
- Patience
Cases

• Photos help
• Don’t include too many facts
• Don’t allow rabbit hole questions—hypotheticals.
• Beware the Fourth Amendment diversion
Trigger Alert

Some of the cases used and situations noted involve serious injuries or death.
A woman in Arizona is **suing her ex-boyfriend** and members of a fraternity at the University of Central Florida, for allegedly sharing explicit videos of her and other women in a private Facebook group without consent.
A Fairfax County jury has awarded $575,000 to a scholarship athlete at George Mason University who suffered serious injuries in a car wreck but made something close to a complete recovery. The defendants – _____ fraternity and a member of its GMU chapter – offered only $35,000 to settle the case despite about $75,000 in uncontested medical bills, according to Edward L. Weiner, an attorney for the plaintiff. Weiner named the national fraternity as a defendant because the wreck occurred when the fraternity member was taking the plaintiff to an off-campus party.
This case from Yale has several dynamics...

• I usually don’t include the name of an organization—it can be a distraction.

• And, I encourage the use of a neutral tone and matter-of-fact approach.
Eighty-six current and former members of the (fraternity) at Yale are the targets of two new lawsuits over a fatal collision at the 2011 Harvard-Yale tailgate that left one woman dead and two others injured.

Thirty-year-old Nancy Barry, of Salem, Mass., was killed in November 2011 when a U-Haul truck driven by Brendan Ross ’13 — heading toward the tailgate area assigned to the fraternity at the Yale Bowl — accelerated and swerved out of control. Sarah Short SOM ’13 and Harvard employee Elizabeth Dernbach were also injured.
Unhappy? Oh yeah.
Last month, Short and Barry’s estate filed new suits, identical but separate, individually naming all the students who were members of the Yale chapter of the fraternity at the time of the crash, regardless of whether or not they were present at the tailgate.

With Short’s medical expenses exceeding $300,000, Short’s attorney Joel Faxon said he expects a jury to award a sum to Short reaching into seven figures.

Paul Edwards, who represents Barry’s estate, said he is looking to recover several million dollars over the death.
People look at the scene of a fatal accident in a parking area outside an NCAA college football game between Harvard and Yale, in New Haven, Conn.
Facilitation questions

• What is the exposure in terms of civil and criminal litigation?
• What if chapter had followed RM procedures & policies?
• Practical choices?
Don’t leave the women’s groups out

• Knew/had reason to know about an event or anticipated behavior of men at an event. (It’s an away game)
• Encouraged/Required members to attend.
• Sanctions if they didn’t.
• Π attorneys have learned to cast a wide net for Δs.
How Can They Trace Us?

- Meeting minutes
- Receipts
- Electronic records
- Checks
- Social dues
- Slush funds

- Texts
- Tweets
- Instagram
- GroupMe
- Emails
- Campus chatter
THE FIRST AMENDMENT
CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.
PROTECT THE FIRST AMENDMENT, SUPPORT THE CBLDF
It’s First for a Reason

• The First Amendment, as that relates to freedom of speech.
• A number of cases in which fraternities successfully defended the right to be inappropriate and racist.
Freedom of Association

Will become increasingly contentious as men’s fraternities choose to exist without recognition or lose same.
Why is the law (and avoiding scandals) important?

• Consider the impact of a big case—Penn State is a good example; Michigan State is another.

• Reputation...prestige. Faculty recruitment. Student recruitment. “Cheapened my degree”

• Impact upon athletics and recruiting—see “Oklahoma” 2015

• Cost. Time. Did I mention time? Cost of defending, cost of litigation, cost of settling a case.
Okay. Let’s talk CSI.

- Good cases for analysis.
- Civil, criminal, bystander, intervention
- Critical juncture: At what point did the situation tilt toward “This won’t end well”? 
Hazing cases = Negligence

• Duty not to haze
• Breach
• Proximate cause
• Damages
Look up “Hazing deaths”

• Penn State
• Florida State
• Texas State
• UC Riverside
• Baruch College
1997: ΘΧ at Clarkson

Clarkson Freshman Dies at Frat
Police Say Student Had Been Drinking

By Chad R. Bowman & Scott Bronstein
Times Staff Writers

POTSDAM — A Clarkson University freshman was found dead at Theta Chi fraternity Sunday, the day after a drinking party to mark the beginning of the organization's pledging process.

"Just shortly before noon, a student was found unconscious in a fraternity by other students," Clarkson spokesman Karen M. St. Hilaire said. "They tried to revive him but could not."

Potsdam's rescue squad took Binaya Oja, Ithaca, to Canton-Potsdam Hospital, where he was declared dead.

Village police are investigating the incident, and an autopsy is scheduled. Chief Terry L. McKendree said the student had consumed a large amount of alcohol. He said the case isn't being treated as a murder investigation, but other criminal charges could be filed against fraternity members.

The student apparently spent the night at the fraternity and telephoned a friend. His friend reported him missing. He was placed on a police blotter after his family reported him missing.

The Times Observer, Clarkson University's student newspaper, said the newspaper had contacted the family, which indicated it was not an official report.

The name of the student was not immediately available. The Times Observer, the university's student newspaper, said it had contacted the family, which indicated it was not an official report.
Sophomore President

Theta Chi president Donald Berkman of Chaumont, left, and member Michael Harding at the arraignment.
Undergraduates make the decision to close the chapter.
The national organization and the University simply confirm your choice.
Let’s talk NPHC/MGC/NALFO/NAPA

1) “We don’t have huge chapters”
2) “We don’t have huge houses”
3) “We don’t have huge parties”
4) “We have a different culture re: alcohol”
5) “We NEVER have alcohol at our events”
Two approaches

Explain duty owed to trespassers v. social invitees v. business invitees

Here’s the deal: Even trespassers are owed a duty of care.

And, are chapters charging admission for events?
Reminder

2) It isn’t your definition of “Event”
- It’s what the facts show or that can be established.
- A birthday party—use of social media? Alcohol? % of members?
On average based upon the FEA survey of 2018-2019, women pay 25% of what men pay for liability insurance.

On average, 25%-30% of claims v. men’s fraternities each year involve fights at social events.
For the women

• Pre-gaming
• How many shots of vodka in that?
A real world case

Women’s organization. 160 members. Crush party. Off-campus venue. All H & S practices in place.

Each member assigned to one of five buses. 3 monitors to each bus. And, each member quizzed briefly before being allowed to board. Six women told, “You ain’t going”
The party’s over...

- EC makes a game-time decision: load 80+ on each bus for trip home.
- EC does a sweep of the club with male security; triple-checks the building.
- 2 or 3 young men stay behind; wait until buses leave.
- One man attempts to cross 4-lane.
Tragic outcome.

Π sues national, “U”, club, bus company, driver and chapter.
What could women have done to be safer?
Remember: It’s not “Perfect” The Reasonable Person test.
Let’s talk “You”

• Are you acting within your administrative authority?
• “And other duties as assigned”
• Insurance—how much is too much?
The VW Rabbit Case
• Greek Week, Michigan State. Kay Stackhouse, φM and me.
• KNEW men’s chapter was unprepared.
• KNEW insufficient time for event, non-existent logistical preparations, crowd too large...
• We were fortunate. Very, very fortunate.
“Bigs” Night at a men’s fraternity chapter. Gary DeVercelly had a blood-alcohol level of 0.426 percent when he was pronounced dead on March 30, authorities said. He died a day after drinking at a party at the ___ fraternity on the private college’s campus.
Rider University's Dean of Students and the Director of Greek Life are among five people charged in the death of a freshman from alcohol intoxication after a fraternity party at the school. The case is monumental as it's the first time in New Jersey that a university official has been implicated in a hazing crime. Gary DeVercelly, 18, of Long Beach, Calif., died on March 30. Those charged were 51-year-old Anthony Campbell, the school's Dean of Students, and 31-year-old Ada Badgley, the Director of Greek Life, with aggravated hazing.
"The ramifications of this for colleges and universities in New Jersey, and across the country, is that it will send some kind of message that the standards of college life, when it relates to alcohol, need to be policed carefully," said Mercer County Prosecutor Joseph Bocchini Jr.
TRENTON, N.J. (AP) — A judge on Tuesday dismissed aggravated hazing charges against two Rider University officials in a case involving the drinking death of a fraternity pledge. Superior Court Judge Maria Sypek approved a request by Mercer County Prosecutor Joseph Bocchini to dismiss charges against Dean of Students Anthony Campbell and Director of Greek Life Ada Badgley.
### Potential litigation: Covid 19

- The first type of cases would be from students seeking tuition refunds for online classes in the form of lawsuits like the ones Drexel University and the University of Miami have seen this spring.
- The second would be if campuses resumed in-person operations, and people got sick upon returning.
Resources!

Fraternal Law

Holmes-Murphy

MJ Insurance

J.R. Favor
Other Resources

- Hazingprevention.org
- Stophazing.org
- Hazing Deaths Database: - Hank Nuwer
Your Campus

- Risk management/Harm reduction
- Insurance representative
- University counsel
- Note: Suggest that you submit your questions ahead of time
Cases—there are many

- Quinn v. Beta Theta Pi 507 NE2d 1193
- Primo v. Pi Kappa Alpha 273 Kan 828
- Oja v. Theta Chi 257 AD2d 924
- Ballou v. Sigma Nu 291 S.C. 140
- Furek v. University of Delaware 594 A2d 506
- “Tort Liability of College, University, Fraternity or Sorority” 68 A.L.R. 4th 228 Robert Beatson
Good language re: “U”

- Foreseeability of harm
- Nature of the risk
- Closeness of the connection between the college’s act or omission and the injury
- Moral blame and responsibility
- Social policy of preventing harm
- Burden on “U” if duty is recognized
- Robert Bickel & Peter Lake “The Rights and Responsibilities of the Modern University”
Questions & Answers
Thanks for joining us!

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