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DO UNIVERSITIES HAVE A SPECIAL DUTY OF CARE TO PROTECT STUDENT-ATHLETES FROM INJURY?

I. INTRODUCTION

Anyone who has watched or participated in sports knows that an athlete’s career can come to an end in an instant. An athlete may be injured, or worse, killed while participating in sports. In


The nature of sports requires that competitive athletes be willing to risk their physical well being if they hope to succeed. See Matthew J. Mitten, Team Physicians and Competitive Athletes: Allocating Legal Responsibility for Athletic Injuries, 55 U. PITT. L. REV. 129, 133 (1993). The result is that athletes take unnecessary risks, believing that they are invincible. See id.

2. Death and serious injuries occur annually in competitive sports. See Mitten, supra note 1, at 133. Hank Gathers is perhaps the best known student-athlete who died while participating in a sport. See Barbara J. Lorence, The University’s Role Toward Student-Athletes: A Moral or Legal Obligation, 29 DUQ. L. REV. 343, 343 (1991). Gathers was considered by many commentators to be one of the “best college basketball players in the country.” Id. After making a slam dunk during Loyola Marymount’s semifinal’s game, Gathers, Loyola’s star forward, collapsed. See id. One hour and forty minutes later, Gathers was dead. See id. Unfortunately, this was not the first time that he had collapsed while playing basketball for Loyola. See id. Gathers had collapsed only three months earlier and began taking medication after tests indicated an irregular heartbeat. See id. Gathers continued to play basketball but soon discovered that he was no longer “a dazzling scorer and rebounder.” Id. at 343-44. After Gathers’ death, rumors abounded that he had stopped taking his medication and that Loyola coaches were not only aware of it, but they encouraged it and continued to allow him to play. See id. See also Kerry L. Hollingsworth, Kleineknecht v. Gettysburg College: What Duty Does a University Owe Its Recruited Athletes?, 19 T. MARSHALL L. REV. 711, 715 (1994). Gathers’ family filed multimillion dollar lawsuits against Loyola’s coach, physicians and athletic trainers. See Mitten, supra note 1, at 129. The family alleged that Gathers was misdiagnosed and not fully informed about the seriousness of his condition. See id. Furthermore, the lawsuits alleged that due to pressure from the coach, physicians had given Gathers a lower dosage of medication so that he could continue to play at the higher level to which he was accustomed. See id. at 130.

Another widely publicized case in which a student-athlete was severely injured involved Citadel linebacker Marc Buoniconti. See Mitten, supra note 1, at 130. Buoniconti was paralyzed during a football game. See id. Buoniconti unsuccessfully sued the team physician for allowing him to play with an injury. See id. Gathers’ death and Buoniconti’s paralysis are just two examples of the serious consequences associated with participating in a team sport. See id. at 131.
college sports, the issue arises as to whom, if anyone, should be held responsible for the injury or death of a student-athlete. What if evidence exists that the athlete was already suffering from an injury or disability and chose to risk aggravating the injury by playing? This Comment explores these questions.

Specifically, Section II examines the duty of care that a university owes its athletes. Section II also explores the three traditional theories that students have used to sue universities. In addition, Section II examines the special relationship that exists between student-athletes and universities. Section III of this Comment considers the conclusions of various courts in cases that involved student-athletes and universities, specifically, when a duty of care existed. Finally, Section III considers the roles and duties of coaches toward their athletes.

II. BACKGROUND

A. Duty of Care Owed to Students

No duty of care exists between entities unless there are special circumstances as a matter of law. Therefore, universities owe no

3. For a discussion of the duty of care a university owes its athletes, see infra notes 8-15 and accompanying text.

4. For a discussion of the three traditional theories students use to sue universities, see infra notes 16-38 and accompanying text.

5. For a discussion of the special relationship between student-athletes and universities, see infra notes 39-63 and accompanying text.

6. For a discussion of different courts' rulings regarding the duty of care that a university owes its student-athletes, see infra notes 64-127 and accompanying text.

7. For a discussion of the duties that coaches owe to athletes, see infra notes 128-48 and accompanying text.

8. See Andrew Rhim, The Special Relationship Between Student-Athletes and Colleges: An Analysis of a Heightened Duty of Care for the Injuries of Student-Athletes, 7 MARQ. SPORTS L. J. 329, 331 (1996); see also Monica L. Emerick, The University/Student-Athlete Relationship: Duties Giving Rise to a Potential Educational Hindrance Claim, 44 UCLA L. REV. 865, 884-85 (1997). In determining whether a duty of care exists, courts consider many factors:

(1) the social utility of the activity out of which the injury arises as compared with the risk involved in it's conduct;
(2) the likelihood of injury from the existence of the activity;
(3) the degree of certainty that the plaintiff suffered the injury;
(4) the closeness of the connection between the defendant's conduct and the injury suffered;
(5) the moral blame attached to the defendant's conduct;
(6) the policy encouraging prevention of future harm;
(7) the magnitude or difficulty of guarding against the injury;
(8) the consequences of placing the burden on the defendant; and
(9) the availability, cost and prevalence of insurance for the risk involved.

Emerick, supra note 8, at 885.
inherent duty of protection to their students. Historically, courts have refused to hold universities liable for injuries sustained while a student is on school grounds, finding that there are no special circumstances or relationships that impose a duty of care toward a student on a university.

Courts have been reluctant to find a special relationship between students and universities under the view that university students are self-sufficient adults. However, courts have recognized three areas in which universities owe a duty to private students. The three theories under which courts have recognized such a duty are the: (1) in loco parentis doctrine; (2) landowner-invitee theory; and (3) student-college relationship as special.

1. **In Loco Parentis Doctrine**

The common law in loco parentis doctrine emerged during a period when universities were stressing discipline and structure.

Under the doctrine, a university owes students a duty of protection


10. See Bradshaw v. Rawlings, 612 F.2d 135, 135 (3d Cir. 1979) (rejecting student-plaintiff's contention that presence of alcohol at school sponsored event imposed duty on college to protect student); Beach v. University of Utah, 726 P.2d 413, 416 (Utah 1986) (holding university has no special duty to protect student from consequences of voluntary intoxication when during prior occasion of drunken disorientation, student told university representative that this was normal behavior for her); Whittlock v. University of Denver, 744 P.2d 54, 59 (Colo. 1987)(rejecting student-plaintiff's claim that college had duty to supervise students' conduct in using trampoline owned by fraternity recognized by university); Swanson v. Wabash College, 504 N.E.2d 327, 330-31 (Ind. Ct. App. 1987)(holding college not liable for injuries suffered during intramural softball game); Van Mstraigt v. Delta Tau Delta, 573 A.2d 1128, 1131 (Pa. Super. Ct. 1990)(holding university not liable for criminal acts occurring on campus in case involving death at fraternity party); Smith v. Day, 538 A.2d 157, 159 (Vt. 1987)(holding university not responsible for on-campus shooting since colleges not liable for volitional criminal acts for which they had no notice).

11. See id. See also Lorence, supra note 2, at 346. Federal and state courts have begun to view students as adults who are capable of taking care of themselves and taking responsibility for their decisions. See id.

12. See Rhim, supra note 8, at 332.

13. For a discussion of the in loco parentis doctrine, see supra notes 16-23 and accompanying text.

14. For a discussion of the landowner-invitee theory, see supra notes 24-30 and accompanying text.

15. For a discussion of the student-college relationship as special, see supra notes 31-38 and accompanying text.

because the university stands "in place of the parents."17 Because the university stood in the place of the parents, courts were reluctant to intervene just as they were reluctant to allow a child to sue a real parent.18 Rather, courts preferred to defer to universities and "adopted a hands-off policy regarding decisions of colleges in both academic and non-academic matters."19 As "parents," universities have the power to regulate the conduct of their students and, in return, they have a duty to protect students from harm.20

Beginning in the 1960s, in the wake of social and political changes that led to increased independence for college students, the in loco parentis doctrine began to lose its popularity.21 The decline in the popularity of the doctrine also resulted from the emergence of the German system of higher education which provided for "large and diversified institutions, and exhibited little concern for the private life of the student."22 After these societal changes, courts consistently refused to use the in loco parentis doctrine as a basis to protect universities from liability to students.23

in developing what universities believed to be necessary restrictive policies. See id. at 194-95.

17. See id. at 195. Colleges were considered to be responsible for securing the "physical and moral welfare" of their students, much as parents were before sending their children off to college. See id.

18. See id. citing ()Illinois ex rel. Pratt v. Wheaton College, 40 Ill. 186, 187 (1866) ("A discretionary power had been given [to college authorities] to regulate the discipline of their college in such manner as they deem proper . . . We have no more authority to interfere than we have to control the domestic discipline of a father in his family.").

19. Rhim, supra note 8, at 333.

20. See Whang, supra note 9, at 29. The doctrine developed in the 1800s at a time when college students were generally seen as children who required guidance and protection by the colleges. See id. at 29-30; see also Rhim, supra note 8, at 332. The relationship between students and universities was generally characterized as custodial. See Hirshberg, supra note 16, at 195.

21. See Rhim, supra note 8, at 333. Courts began granting students more rights, refusing to defer to unconstitutionally restrictive university policies. See Hirshberg, supra note 16, at 197. Changing societal attitudes were reflected by the enactment of the Twenty-Sixth Amendment lowering voting rights to 18, the Vietnam War and the Civil Rights Movement. See id. at 197-98; see also Whang, supra note 9, at 30; Lorence, supra note 2, at 346.

22. Hirshberg, supra note 16, at 196. The German model prospered for numerous reasons. See id. First, it allowed for the education of a much larger body of students. See id. Second, it accommodated soldiers attending college on the G.I. bill. See id. Finally, the baby boom created a need for larger and more comprehensive universities. See id. at 197.

23. See Whang, supra note 9, at 30-31. In recent years, some have called for a return to the doctrine because of increased reckless behavior on college campuses. See Rhim, supra note 8, at 333.
2. Landowner-Invitee Theory

In general, students have had more success suing their universities under the landowner-invitee theory than they have had under the in loco parentis doctrine.24 This success is attributable to the "special relationship of landowner-invitee between colleges and students."25 To impose liability under the landowner-invitee theory, the crime at issue must have been reasonably foreseeable.26 Although courts are more willing to impose liability under this theory, they have refused to hold that a duty of care arises automatically when an injury is reasonably foreseeable.27 Furthermore, courts have only been willing to impose liability for injuries sustained on-campus, not off-campus.28 In sustaining an injury on-campus, a student can argue that the university, as a landowner, owes them a duty of care.29 When a student is off-campus, the university is no longer a landowner and no such duty of care exists.30

24. See id. One of the reasons for this was the increased problem of rape and sexual assault on college campuses. See Hirshberg, supra note 16, at 205-06. Courts were forced to find an avenue in which universities owed a duty to their students. See id.

25. See Rhim, supra note 8, at 333. In a landlord-invitee special relationship, landowners have a duty to protect invitees. See Whang, supra note 9, at 31.

26. See Hirshberg, supra note 16, at 206. This often requires a finding of "actual or constructive knowledge of prior, similar acts." Id.

27. See Whang, supra note 9, at 32. This action by the courts, although allowing a cause of action, is very limited. See id. Even if the injury was highly foreseeable, such as an alcohol-related injury, courts will not automatically impose liability. See id. Baldwin v. Zoradi was one of the first cases to deal with the issue of an alcohol-related injury. See Baldwin v. Zoradi, 176 Cal. Rptr. 809 (Cal. Ct. App. 1981). The California Court of Appeals refused to impose a duty on the university to control student consumption of alcohol. See id. at 819. Universities are aware that students consume alcohol and that this increases the risk of injury, but universities have not been held responsible for protecting students from these types of highly foreseeable injuries. See id. at 818; see also Rhim, supra note 8, at 334.

28. See Whang, supra note 9, at 32. This demonstrates the court's reluctance to premise their results on the idea that it is a "special-college relationship" which gives rise to a duty of care. See id. at 32. As landowners, universities are only responsible for those injuries that were foreseeable and occurred on their land. See id. By recognizing a duty when the injury occurs off-campus, the rationale behind the landowner-invitee theory no longer applies. See id. The injury is not occurring while the invitee (student) is on the landowner's (university's) land. See id.

29. See Rhim, supra note 8, at 334. In the event of an off-campus injury, the university is no longer the landowner. See id. If this were applied strictly to athletes, then colleges would not be liable for injuries. See Rhim, supra note 8, at 334. As a result, universities would not be liable to student-athletes for injuries resulting at an off-campus sporting event. See id.

30. See id.
3. The Student-College Relationship As Special

Absent a special relationship, a defendant owes no duty to a plaintiff.\(^{31}\) When a special relationship does exist, however, a defendant owes a plaintiff an affirmative duty to protect the plaintiff from harm and failure to act will constitute nonfeasance.\(^{32}\) Thus, colleges do not owe a duty of care to their students unless a special relationship exists between universities and their students.\(^{33}\)

Special relationships often exist because one party is dependent on the other party or the parties are mutually dependent.\(^{34}\) The Restatement (Second) of Torts lists such special relationships based on dependency, including common carrier and passenger or innkeeper and guest.\(^{35}\) This list is not exhaustive, however, and courts may find a special relationship in other circumstances such as

\(^{31}\) See supra notes 8-10 and accompanying text. To bring a claim against a defendant, a plaintiff must first establish that the defendant owed the plaintiff a requisite duty of care. See James Kennedy Ornstein, Broken Promises and Broken Dreams: Should We Hold College Athletic Programs Accountable for Breaching Representations Made in Recruiting Student-Athletes?, 6 SETON HALL J. SPORT L. 641, 657 (1996).

\(^{32}\) See Emerick, supra note 8, at 886. Although the “line between misfeasance and nonfeasance is not always clear,” the basic question to consider is: . . . whether the defendant has acted in such a way and placed himself into such a relationship with the plaintiff that he has begun to affect the interests of the plaintiff adversely, a [mis]feasance, or whether the defendant has merely failed to confer a benefit upon the plaintiff, a nonfeasance.

\(^{33}\) See Whang, supra note 9, at 33. Liability because of a special relationship has not been premised on the “unique” relationship of a university and its students. See Timothy Davis, Examining Educational Malpractice Jurisprudence: Should a Cause of Action Be Created for Student-Athletes?, 69 DENV. U. L. REV. 57, 85 (1992). There is no doubt that the student-university relationship is arguably unique. See id. The university is the center of its students’ lives. See id. Nevertheless, courts are reluctant to create a special relationship because they believe that students are adults who are capable of taking care of themselves and that universities should not be insurers of student safety. See id.

\(^{34}\) See Emerick, supra note 8, at 887; see also Lorence, supra note 2, at 353.

\(^{35}\) See id. The Restatement provides:

(1) A common carrier is under a duty to its passengers to take reasonable action,

(a) to protect them against unreasonable risk of physical harm, and

(b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.

(2) An innkeeper is under a similar duty to his guests.

(3) A possessor of land who holds it open to the public is under a similar duty to members of the public who enter in response to his invitation.

(4) One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other. Restatement (Second) of Torts § 314A, 320 (1965).
as the university situation. Recently, there has in fact been a shift in tort law toward expanding the affirmative duties placed on large social institutions, including universities. Courts have continued to refuse, nevertheless, to find a special relationship between universities and their students and to impose a duty of care on universities.

B. Duty of Care Owed to Student-Athletes by Colleges

As discussed above, courts have been generally reluctant to find a special relationship between students and universities. Therefore, courts have been unlikely to impose liability on universities for breaching a duty of care. When students are also athletes, however, the relationship changes. Student-athletes provide universities with many financial advantages. Student-athletes are distinct from private students for three reasons: (1) colleges do not view student-athletes as employees while these students generate both economic and non-economic benefits for colleges; (2) student-athletes are clearly distinct from private students; and (3) student-athletes and colleges have a ‘special relationship’ character-

36. See id. The comment provides: “[t]he relations listed are not intended to be exclusive, and are not necessarily the only ones in which a duty of affirmative action for the aid or protection of another may be found.” Id.

37. See Emerick, supra note 8, at 887. The result is a shift from the previous “no liability” rule to a new rule of “liability for negligence.” Id.

38. See Rhim, supra note 8, at 334-35. Courts refuse to impose a duty of care based largely on the same reasons why they refuse to accept the in loco parentis doctrine. See id. Courts see students largely as autonomous. See id. at 335. Colleges “are educational institutions not custodial ones.” Rhim, supra note 8, at 335 (quoting Beach v. University of Utah, 726 P.2d 415, 419 (Utah 1986)).

39. See infra notes 8-36 and accompanying text.

40. See Whang, supra note 9, at 36. See, e.g., Bradshaw v. Rawlings, 612 F.2d 135, 135 (3d Cir. 1979) (rejecting student’s claim that college had duty to protect student at school sponsored event where alcohol was present); Beach v. University of Utah, 726 P.2d 415, 416 (Utah 1986) (no duty of care because of educational not custodial relationship); Whitlock v. University of Denver, 744 P.2d 54, 59 (Colo. 1987) (rejecting student claim that university had duty to supervise student’s conduct with respect to use of fraternity owned trampoline); Swanson v. Wabash College, 504 N.E.2d 327, 330-31 (Ind. Ct. App. 1987) (finding college not liable for injuries suffered at intramural softball game).

41. See Rhim, supra note 8, at 336.

42. See id. Intercollegiate athletes, unlike their private counterparts, generate millions of dollars for the university. See id. Due to this distinct difference between student-athletes and private students, it is fair that student-athletes have a special relationship with their universities. See id. Colleges do owe a heightened duty of care to student-athletes. See id.; see also supra notes 44-61 and accompanying text.
ized by mutual dependence." For these reasons, universities should owe a special duty to their athletes.

1. Student-Athletes as Employees

Currently the NCAA has an amateur system in place. Amateurism focuses on the idea that students are rewarded for their efforts by receiving an education rather than monetary compensation. Some commentators criticize this arrangement because many of these athletes generate "substantial revenue for major college athletic departments." Despite this criticism, courts have refused to recognize the relationship between student-athlete and university as an employee-employer relationship.

2. Differences Between Student-Athletes and Private Students

The differences between student-athletes and private students illustrate another reason why universities should owe student-athletes a heightened duty of care. The most basic distinction involves the control universities maintain over their student-athletes. The time commitment required for an athlete participating in a sport is similar to that of a full-time job, and it may be more physically or emotionally demanding.

43. Rhim, supra note 8, at 336. These three important differences justify imposing a heightened standard of care on universities where their student-athletes are involved. See id.
44. See id.; see also infra notes 56-63 and accompanying text.
45. See Rhim, supra note 8, at 329-30.
46. See id. at 330. The NCAA provides its athletes with an environment to learn, tuition, room, board and books. See id.
47. Rhim, supra note 8, at 329.
48. See id. at 336. Earlier cases found that student-athletes seeking workmen's compensation after being injured while participating in a sport can be considered employees for that purpose only. See University of Denver v. Nemeth, 257 P.2d 425, 423 (Colo. 1953). Recent cases have refused to consider student-athletes as employees for purposes of workers' compensation because scholarships are not employment agreements. See Rhim supra note 8, at 336-37.
49. See Whang, supra note 9, at 43.
50. See id. This is the key distinction. See id. Athletes' attendance at college is based on different terms than most non-athletes. See Emerick, supra note 8, at 889. While non-athletes may also be bound by a financial aid statement, athletes are additionally obligated under the National Letter of Intent. See id. The National Letter of Intent is an agreement between the student-athlete and the university compelling the student's attendance at the university. See id. It prohibits an athlete's ability to play a sport for another university. See id.
51. See Emerick, supra note 8, at 891-92. Athletes train year round. See id. at 891. Athletes are busy with "[p]re- and postseason activities, weight training, and conditioning . . . ." Id. Calculations determined that at a Division I school, basketball players would earn an hourly wage of $3.75 and football players would earn the equivalent of $4.70 an hour. See id. Therefore, it is unfair to say that scholar-
Additionally, university athletic departments control virtually all aspects of the lives of student-athletes, including social activities and academic decisions. Often, athletic coaches and departments encourage student-athletes to select less demanding majors so that they can have more time to devote to athletics. In some cases, athletes do not even look at course descriptions or educational requirements because coaches automatically register the students for a selected curriculum. It is "[t]his limited personal autonomy during college [which] distinguishes the student-athlete from the private student."

ships equal a "free ride." See id. During the actual season it is impossible to study because players are exhausted. See Emerick, supra note 8, at 892. UCLA basketball player Charles O'Bannon emphasized this. See id. He stated that studying time for the team was from eight to ten at night. See id. On the many days when athletes are tired, O'Bannon observed, eight to ten is late at night and it is difficult to concentrate on studying. See id. One professor and former college football player noted "'It's not like working at Macy's.... None of my [non-athlete] students is expected to risk his body every day. Most people never deal with that kind of exhaustion, with the exception of the military.'" Id. at 890.

Additionally, student-athletes may not be equipped emotionally to determine what is in their best interest. Mitten defines a competitive athlete as:

one who participates in an organized team or individual sport that requires regular competition against others as a central component, places a high premium on excellence and achievement. Another important facet of competitive activity is that the athlete may not be able to use proper judgment in determining whether to extricate himself or herself from the competitive event, should that become necessary. Mitten, supra note 1, at 133.

52. See Emerick, supra note 8, at 891. This includes such activities as booster functions. See Davis, supra note 33, at 93. This takes important time away from studying and other activities chosen by the athlete. See id. Because of the importance of athletics at most universities to generate revenue, it is difficult to maintain a balance between athletics and education. See Emerick, supra note 8, at 879. Often, due to the control that universities maintain over their athletes, an athlete's education becomes secondary to athletics. See id. at 879-80.

53. See Emerick, supra note 8, at 897. This is not the case in all universities. There have been more and more cases, however, of athletes who leave a university after four years without a degree. See The Goal of Graduation, GRAND RAPIDS PRESS, July 13, 1997, at B2. A 1996 University of Michigan study estimated that only 74% of its athletes graduate with a degree. See id.; see also, Lorence, supra note 2, at 354 (noting Northeastern study that says that more than 70% of full scholarship athletes never graduate). One study estimated that 50% of all varsity athletes leave college without a degree. See id. A 1985 report estimated that only 25% of basketball players and 30% of football players graduate within 5 years at a university. See id. For African-American players, the number dropped to 20%. See id.

54. See Rhim, supra note 8, at 338; see also Davis, supra note 33, at 993. One former student-athlete discussed his negative experiences with the control that his university exercised over his academics. See Emerick, supra note 8, at 895. He said that coaches picked all of his classes and arranged for his summer job. See id. He entered college with plans to be a sports broadcaster, but instead ended up first in the business school and later the physical education department. See id. at 895-96. Four years after enrolling in college, he left without a college degree. See id. at 895.

55. Rhim, supra note 8, at 338.
3. **Special Relationships Between Universities and Student-Athletes**

The relationship between student-athletes and universities can be characterized as one of mutual dependence. Student-athletes depend on universities to receive an education. They also depend on colleges to help them improve their athletic skills in pursuit of careers as professional athletes.

In return, student-athletes provide economic and non-economic benefits for their universities. Successful student-athletes increase attendance at sporting events and attract corporate sponsors. Furthermore, successful student-athletes generate school enthusiasm, facilitate recruitment and attract national media exposure.

In sum, several important differences distinguish student-athletes from private students. This does not necessarily imply that private students are less valuable to universities than student-athletes, but rather that the value of private students is manifested differently. Due to the distinctions between student-athletes and

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56. See id. at 339; see also Davis, supra note 33, at 92. One example of courts using mutual dependence to find a duty of care is when the plaintiff has some existing or potential economic advantage over the defendant. See id. In these cases, defendants are expected to protect plaintiffs because of the plaintiff’s expectation of protection resulting from the defendant’s financial gain. See Rhim, supra note 8, at 339.

57. See id. Athletes receive this through scholarships, physical and mental training and discipline. See id. Scholarships often provide athletes with the only opportunity to attend college. See id.

58. See id. at 341. Student-athletes depend on colleges to provide them with substantial media coverage, allowing athletes to market their skills. See Whang, supra note 9, at 43.

59. See id. at 39. Student-athletes “generate ticket sales, alumni gifts, television coverage and post-season bowl bonuses . . . .” Lorence, supra note 2, at 353.

60. See Rhim, supra note 8, at 339. In 1989, the University of Michigan received $18.5 million in revenues with $7.4 million from football receipts alone. See id. at 340. The colleges sending athletes to the 1989 bowl games shared $57 million in revenue. See Lorence, supra note 2, at 354.

61. See Rhim, supra note 8, at 340.

62. See Emerick, supra note 8, at 890. Because universities provide athletes with scholarships and other perks, athletes are expected to perform certain tasks that private students are not. See id. at 888. This distinguishes them from private students and places them in a unique and special relationship with universities. See id. at 889. Another difference is the student-athlete’s willingness to participate in a sport in return for an education. See id. This is often the only way that a student-athlete can afford to attend college. See id. This is quite different from private students whose attendance at a university indicates that they have other means to provide for college. See id.

63. See id. at 879. “Star athletes, unlike other students, are truly assets of the university and are often viewed in terms of their potential to generate revenue rather than as students to be educated.” Id. at 879 (quoting Marianne Jennings and Lynn Ziokio, Student-Athletes, Athlete Agents and Five Year Eligibility: An Environ-
private students, as well as the fact that universities treat student-athletes differently, courts could logically characterize the relationship between universities and student-athletes as special.

III. Analysis

Many courts have imposed a duty of care on universities when a student-athlete is injured, although some courts still refuse to find a special relationship between student-athletes and their universities. This section examines the various results of lawsuits brought by student-athletes against their universities. This section also examines the potential liability of coaches for the injuries of student-athletes under their direction.

A. Courts Concluding that the Relationship Between Student-Athletes and their Universities is Special

In Orr v. Brigham Young University, a student-athlete sued Brigham Young University (BYU) for failing to provide adequate medical care when the student-athlete suffered a back injury in a football

64. See, e.g., Fox v. Board of Supervisors of Louisiana State University, 576 So. 2d 978, 978 (La. 1991) (holding no duty owed by university to student-athlete who suffered broken neck while participating in school tournament).

65. For a discussion of suits brought by student-athletes, see infra notes 67-127 and accompanying text. Courts have been much more willing to impose a duty on schools when the school involved is a high school. See, e.g., Roventini v. Pasadena Indep. School Dist., 981 F. Supp. 1013, 1013 (S.D. Tex. 1997) (holding district liable for student death due to heat exhaustion during practice); Benitz v. New York City Bd. of Education, 541 N.E.2d 29, 29 (N.Y. 1989) (finding that high schools have duty to protect student-athletes from risk by exercising reasonable care); Beckett v. Clinton Prairie School Corp., 504 N.E.2d 552, 552 (Ind. 1987) (holding school and coach breached duty to exercise reasonable care in supervision); Leahy v. School Bd. of Hernando County, 450 So. 2d 883, 888 (Fla. Dist. Ct. App. 1984) (concluding that high school owed duty to supervise and provide proper instruction to students).

66. For a discussion of the liability of coaches to student-athletes, see infra notes 128-48 and accompanying text.

game. Under the Restatement (Second) of Torts § 314A, which Utah has adopted, Orr had to show that he had a special relationship with BYU. Orr argued that the district court erred by granting summary judgment in favor of BYU due to lack of a special relationship. On appeal, he submitted that universities owe a special duty to student-athletes greater than that owed to private students. The Tenth Circuit acknowledged that, perhaps, such a duty should exist. The Court stated that it was constrained not to find a special duty in this case, however, because Utah case law does not recognize such a duty. Specifically, the court stated that, "[a]s a federal court, we are reticent to expand state law in the absence of clear guidance from Utah's highest court, or at least a strong and well-reasoned trend among other courts which Utah might find persuasive, in favor of such expansion." The Tenth Circuit discussed the conclusion of the Third Circuit that a special relationship does exist between student-athletes and universities, but

68. See id. at *1. Orr alleged that he was injured while playing football for BYU. See id. He contended that "enormous pressure" from coaches induced him to continue playing, which further injured his back. See id. Orr claimed that BYU breached its duty of care in diagnosis and treatment of his back injuries, acting in a way that caused him increased harm. See id.

69. See supra notes 35-36 and accompanying text.

70. See Orr, 1997 WL 143600, at *2. The Restatement imposes a duty of care only when a special relationship exists. See id. For a further discussion of the Restatement (Second) of Torts, see supra notes 35-36 and accompanying text.

71. See Orr, 1997 WL 143600, at *2. Orr sued the University on several theories:

that BYU owed a duty of care to him based on a special relationship created by his status as a student-athlete at BYU; that BYU's conduct created a situation in which playing him would cause him harm, thus imposing on BYU an affirmative duty to protect him from injury; that BYU allowed its trainers to practice medicine without a license; and that BYU breached its duty of care to him in its diagnosis and treatment of his medical injuries.

Id. at *1.

72. See id. at *2.

73. See id.

74. See id. The court quoted Beach v. University of Utah, 726 P.2d 413 (Utah 1986) to support their conclusion, but it did not consider the issue. See Orr, 1997 WL 143600, at *2. Instead, the court stated that there was no Utah precedent for this case. See id. The Tenth Circuit had in the past refused to expand state law without some state precedent. See id.; see also Taylor v. Phelan, 9 F.3d 82, 87 (10th Cir. 1993) (declining to expand concept of special relationship between police and citizens beyond boundaries of Kansas courts).

75. Orr, 1997 WL 143600, at *2. The court stated that there appears to be no "trend" in Utah or elsewhere which would impose a duty on BYU based on a special relationship. See id.
distinguished Orr on the basis that the Third Circuit relied on cases involving high school, rather than university athletics.76

In Kleinknecht v. Gettysburg College,77 the parents of a lacrosse player who suffered a heart attack during a practice session brought a wrongful death and survival action against Gettysburg College.78 The parents argued that a special relationship existed between student-athletes and universities, which imposed a special duty of care on universities.79 They argued further that harm to student-athletes was foreseeable.80

The district court granted summary judgment in favor of the college, based on the conclusion that the risk that a young, healthy athlete suffering a heart attack was not reasonably foreseeable and that the college had no duty to guard against such an event.81 The

76. See id. n.1 (discussing Kleinknecht v. Gettysburg College, 989 F.2d 1360 (3d Cir. 1993)).
77. 989 F.2d 1360 (3d Cir. 1998).
78. See id. at 1362. Drew Kleinknecht was recruited by Gettysburg College to play for the college’s Division III intercollegiate lacrosse team. See id. at 1362-63. Because lacrosse is a contact sport that frequently leads to injuries including concussions, the college took measures to ensure the students’ safety. See id. at 1363. Specifically, the college employed two full-time athletic trainers who were certified by the National Athletic Trainers Association. See id. The trainers were required to know cardio-pulmonary resuscitation (CPR) and standard first aid. See id. Additionally, twelve student trainers were on hand. See id. Student trainers were assigned to all spring games and practices. See id. They were not, however, assigned to fall practices because those off-season practices were held only to teach skills. See id.

On September 16, 1988, Drew participated in fall practice. See id. No trainers attended the practice, but there were two coaches present. See id. Neither coach was certified in CPR, nor did they have a radio on the field in the case of an emergency. See id. While participating in a drill, Drew suffered cardiac arrest and was later pronounced dead. See id.

79. See id. The Kleinknechts contended that the college breached its duty of care by not providing adequate preventive measures in the case of a medical emergency. See id. The Kleinknechts and the college disagreed about what happened immediately following Kleinknecht’s collapse. See id. at 1364-65. The college maintained that a coach was immediately at Kleinknecht’s side and that the school’s emergency plan (assessing the injured’s condition and then sending for a trainer and ambulance) was properly followed. See id. at 1363. According to the college, an ambulance arrived on the field within 8 to 10 minutes after Kleinknecht collapsed. See id. at 1364. The Kleinknechts maintain that an ambulance did not arrive on the scene for approximately 22 minutes. See id. at 1365. The Kleinknechts argue that the steps taken by the college were not adequate preventive measures. See id. at 1366.

80. See id. at 1366. It is foreseeable that athletes may suffer “severe and even life threatening injuries while engaged in athletic activity . . . .” Id. at 1369.
81. See id. at 1362. Prior to Kleinknecht’s collapse, he had no medical history of heart problems. See id. at 1365. Both a Gettysburg College physician and the Kleinknecht family physician confirmed this through medical records. See id. Due to Kleinknecht’s appearance of overall good health, the court held that there was “no duty to anticipate and guard against the chance of a fatal arrhythmia in a
Third Circuit reversed and remanded for further findings based on the determination that the college owed a duty to its student-athletes based on the existence of a special relationship. The court stated that a duty of care to ensure the health of athletes exists, particularly when a school utilizes a student-athlete to help generate interest in the school. The court stated that the "distinction [between student and athlete] serves to limit the class of students to whom a college owes the duty of care that arises here." The Third Circuit further asserted that a university owes a duty to student-athletes when the risk of harm is both unreasonable and foreseeable.

In recognizing that a special relationship exists between student-athletes and universities, the Third Circuit emphasized three important factors. First, the court found pertinent the fact that young and healthy athlete." See id. at 1362. The court also found that the college did not negligently breach any duty that might exist because their actions after Kleinknecht's heart attack were reasonable. See id.

82. See id. at 1375. The court agreed with the Kleinknechts, basing their decision on the Hanson v. Kynast case. See id. (citing Hanson v. Kynast, Mo. CA-828 (Ohio Ct. App. 1985), rev'd on other grounds, 494 N.E.2d 1091 (1986)). The Hanson court implicitly held that the university owed a duty of care to the plaintiff student-athlete. See id. When Kleinknecht collapsed, he was participating in a school scheduled practice for an intercollegiate sport for which he had been recruited. See id. at 1367. He was not acting on his own and was not engaged in his own private affairs. See id. Based on this, the Third Circuit held that the Supreme Court of Pennsylvania would find that a similar duty exists on the facts of the Kleinknecht case. See id. The court noted that other cases had found a similar duty. See id. (citing Beckett v. Clinton Prairie Sch. Corp., 504 N.E.2d 552, 553 (Ind. 1987)(high school personnel have duty to exercise ordinary and reasonable care for safety of student-athletes under their authority)); Leahy v. Sch. Bd. of Hernando County, 450 So. 2d 883, 885 (Fla. Dist. Ct. App. 1984)(defendant school board owed duty to properly supervise spring football practice as approved school activity in which school employees had authority to control behavior of students).

83. See Kleinknecht, 989 F.2d at 1368. The court emphasized the distinction between private students pursuing their own interests and activities and student-athletes who have been recruited and are participating in intercollegiate, school sponsored sports. See id.

84. Id.

85. See id. at 1369. In considering foreseeability, the court noted that it is not the foreseeability of a specific event that determines duty of care. See id. Rather, "[t]he concept of foreseeability means the likelihood of the occurrence of a general type of risk rather than the likelihood of the occurrence of the precise chain of events leading to the injury." Id. quoting Suchomajcz v. Hummel Chem. Co., 524 F.2d 19, 28 n.8 (3d Cir. 1975)) (citation omitted).

Furthermore, the risk of harm must be unreasonable. See id. "No person can be expected to guard against harm from events which are not reasonably to be anticipated at all." Id. at 1370. Although defendants are not required to guard against all risks, generally foreseeable risks must be guarded against. See id. While it may not have been foreseeable that Kleinknecht specifically would suffer cardiac arrest, it was foreseeable that a life threatening injury could occur to one of the players. See id. The failure of the college to protect against such a risk was unreasonable. See id.

86. See id. at 1368-71.
the student-athlete was actively recruited by the university to participate on its lacrosse team. Second, the court emphasized that, at the time of his collapse, the student-athlete was acting in his capacity as an athlete rather than as a private student. Third, the court focused on foreseeability and reasonableness, finding that the heightened duty of care that a university owes its student-athletes exists only when the risk of harm is both foreseeable and unreasonably significant.

In Knapp v. Northwestern University, the Seventh Circuit held that a special relationship existed between a student-athlete and a university. Although the facts of this case differed markedly from the Kleinknecht case, the court found that universities have a duty to protect their student-athletes when the chance of injury is high.

Knapp was recruited to play basketball by Northwestern University. Prior to attending Northwestern and while participating in a high school basketball game, however, Knapp suffered cardiac arrest. The university assured Knapp that, regardless of his medical condition and potential inability to play basketball, the school would honor its scholarship commitment to him. Subsequently, the university and the Big Ten Conference declared Knapp perma-
nently ineligible to play college basketball because of his condition. 96

In response, Knapp filed suit and a federal district court found
Knapp medically eligible to play intercollegiate basketball for
Northwestern. 97 On appeal, the Seventh Circuit reversed the dis-
trict court’s decision and allowed Northwestern to make the final
determination on Knapp’s eligibility. 98 The court stated that “col-
leges and universities can exercise a duty of care and protect their
student-athletes against foreseeable injuries.” 99 Although the Sev-
enth Circuit used different language than the Third Circuit used in
Kleinknecht, “the decision in Knapp supports the legal recognition of
a duty of care owed to student-athletes by colleges based on the
‘special relationship’ between the two.” 100

96. See id. Originally, the Northwestern team physician declared Knapp inel-
igible to play basketball for Northwestern’s team for the 1995-1996 season. See id. at
476-77. The doctor based his decision on medical records (in which treating physi-
cians suggested that Knapp should not play competitive basketball), a physical ex-
amination by one of the other team doctors, recommendations and guidelines
from the Bethesda Conferences (two medical conferences held specifically to de-
velop recommendations by physicians on the “eligibility of athletes with cardiovas-
cular abnormalities to compete in sports”) and recommendations of doctors with
whom the team doctors consulted. See id. at 477. At the end of the 1995-1996
basketball season, Northwestern declared Knapp permanently ineligible to play
basketball for Northwestern. See id. The athletic director stated that “Northwest-
ern will never voluntarily let Knapp play intercollegiate basketball as a Wildcat.”
Id.

97. See id. The district court based its decision on the testimony and affidavits
of two Northwestern experts and three of Knapp’s experts. See id. All of the ex-
erts agreed that because of his condition, playing basketball placed Knapp at a
greater risk of death than other male athletes. See id. at 477-78. They also recog-
nized that the defibrillator in Knapp’s body had never been tested under the con-
ditions of basketball and that no other player (at the collegiate or professional
level) had ever played basketball with an internal defibrillator. See id. at 478. The
experts disagreed as to the extent of the increased risk that Knapp would face. See
id. Knapp’s experts felt that the risk was insubstantial or acceptable, while North-
westeren experts felt that it was a significant and unacceptable risk. See id. The
district court enjoined Northwestern from excluding Knapp from playing on its
basketball team. See id. at 477.

98. See id. at 484. To prevail under the Rehabilitation Act, Knapp had to show
four things: “(1) he is disabled as defined by the Act; (2) he is otherwise qualified
for the position sought; (3) he has been excluded from the position solely because
of his disability; and (4) the position exists as part of a program or activity receiv-
ing federal financial assistance.” Id. at 478 (citation omitted). The court disputed
whether Knapp was “otherwise qualified for the position sought” and whether he is
disabled under the meaning of the act. See id.

99. Rhim, supra note 8, at 347.

100. Knapp v. Northwestern University, 101 F.3d at 478. After declaring
Knapp ineligible to play basketball, the university treated Knapp as an ordinary
student in that it did not restrict “him from playing pick-up basketball games, us-
ing recreational facilities on campus, or exerting himself physically on his own
. . . .” Id. at 476. This shows the different treatment that universities afford their
athletes, illustrating the existence of a special relationship.
In Kennedy v. Syracuse University, a student-athlete was injured during a gymnastics practice. At the time of the injury, no athletic trainers were present which forced the coach and teammates to provide emergency first aid to Kennedy. Kennedy sued on the theory that the university owed its student-athletes a duty to have a trainer present at all athletic practices. Although the court ruled in favor of the university because Kennedy was unable to show proximate cause, the court did not dispute that a university owes its student-athletes a duty of care. Similarly, the university did not deny that it owed a reasonable duty of care to its student-athletes. In sum, both the court and the university clearly presumed that a special relationship existed between the student-athlete and the university that imposed a heightened duty of care on the university.

The decisions in Kleinknecht, Knapp and Kennedy each recognized that a special relationship exists between student-athletes and universities. In recognizing a special relationship, the three courts necessarily recognized the corresponding duty of care on the part of the respective universities. Unlike the courts in Kleinknecht, Knapp and Kennedy, however, the Orr court held that the university did not owe its student-athletes any duty of care because of a special relationship.

102. See id. at *1. The student, Russell Kennedy, sustained an injury to his wrist while practicing on the high bar. See id. The injury was the result of a failed hand grip which "caus[ed] his wrist to lock in place and be slammed against the bar as his body continued to swing over the bar." Id.
103. See id. Before the grip could be removed, the straps had to be tightened first. See id. Kennedy argued that this tightening of the straps by teammates, due to the lack of a trainer being present, exacerbated his injuries. See id. at *2.
104. See id. at *1. Kennedy made three arguments: (1) the university was negligent in not having a trainer present at practices; (2) because he was a scholarship athlete, a contract existed obligating the university to have a trainer present at practice at all times; and (3) the university breached a voluntarily assumed duty to have a trainer at athletic practices. See id.
105. See Kennedy v. Syracuse University, No. 94-CV-269, 1995 WL 548710, at *2 (N.D.N.Y. Sept. 12, 1995). Rather, the court found that there was no cause of action because the student-athlete did not establish proximate cause. See id.
106. See id. Instead, Syracuse moved for summary judgment on the basis of the student-athlete's failure to show proximate cause. See id.
107. For a discussion of these three cases and the courts finding of a special relationship, see supra notes 78-108 and accompanying text.
108. For a discussion of the court's determination that universities owe their student-athletes a duty of care, see supra notes 39-63 and accompanying text. For a discussion of the requirements necessary to satisfy a duty of care claim, see supra notes 8-38 and accompanying text.
109. See Orr v. Brigham Young University, No. 96-4015, 1997 WL 143600, at *2 (10th Cir. Mar. 31, 1997). For a further discussion of the Orr court's decision, see
Although the three factors laid out in Kleinknecht, Knapp and Kennedy applied equally to the facts in Orr, the Orr court declined to consider them. First, the Kleinknecht, Knapp and Kennedy courts each emphasized the relevance of recruitment. The Orr court, however, did not discuss whether the university recruited Orr to play football. If the university did not recruit Orr as an athlete, the court could have distinguished the case, but the court failed to consider it.

Second, the Kleinknecht court emphasized the relevance of whether the student-athlete was acting in his capacity as an athlete at the time of the injury. Orr suffered his injury while participating in a school sponsored athletic event that benefited the university.

Third, the Klinknecht court considered whether there was a foreseeable and unreasonably significant risk of harm. The Orr court did not discuss this factor even though a foreseeable and, perhaps, unreasonably significant risk of harm exists when an athlete participated in sports with a back injury.

supra notes 73-75 and accompanying text. Even though all three of the previously mentioned decisions were reached before the decision in Orr, the only decision the Orr court alluded to was the Kleinknecht decision. See id. at *2 n.1. In a footnote, the court quickly disregarded Kleinknecht because it relied on cases developed in the high school arena. See id. The Orr court stated that there was no indication that the Utah Supreme Court would adopt the Kleinknecht rationale. See id.

110. The three factors emphasized by the Kleinknecht court were: (1) that the student-athletes were recruited by the school and the school thereby benefited; (2) that at the time of injury the student was acting in his/her capacity as an athlete rather than that of a private student; and (3) that the risk of harm is foreseeable and unreasonable. See Kleinknecht v. Getysburg College, 989 F.2d 1360, 1368-71. For an expanded discussion of these factors, see supra notes 87-90 and accompanying text.

111. See Hirshberg, supra note 16, at 216 (discussing Kleinknecht decision). The court stated that the school's recruitment showed that the school intended to benefit from Kleinknecht's participation in its lacrosse program. See id. Furthermore, in dicta, the court stated "that the result probably would have been different if the student had been participating in intramural sports." Id.; see also Rhim, supra note 8, at 347 (discussing Knapp decision and stating that universities have general duty to protect their student-athletes "for the sport in which they were recruited and when the severity of potential injury is high").

112. See Orr, 1997 WL 143600, at *2.

113. See Kleinknecht, 989 F.2d at 1371. This is a critical factor. See Rhim, supra note 8, at 343. It has been widely held that universities do not owe private students a duty of care when students are engaged in their own activities. See supra notes 8-96 and accompanying text.

114. For a discussion of athletes' injuries occurring during a university sanctioned event, see supra notes 78-90 and accompanying text.

115. See Orr, 1997 WL 143600, at *1. Orr claimed that despite the coaches' knowledge of his injuries, he was pressured to continue playing, resulting in his exacerbating his back injuries. See id.
In Orr, the Tenth Circuit refused to apply these factors based on Beach v. University of Utah. The Beach case, however, is distinguishable because it involved a private student rather than a student-athlete. Courts have generally not found a special relationship or a corresponding duty of care in cases involving private students. The Orr court feared that if it found a special relationship, Utah's colleges and universities would face an overly expansive duty. The court failed to recognize, however, that the class of people to whom a duty would be owed would be strictly limited to student-athletes.

While courts have increasingly recognized a special duty of care owed to student-athletes, the Orr decision does not reflect this trend. In Orr, the Tenth Circuit relied exclusively on old case law and did not distinguish the relationship between universities and student-athletes from the relationship between universities and private students. As discussed in this Comment, however, these relationships are inherently different. Student-athletes are treated differently in that they receive benefits that private students do not receive. In addition, student-athletes benefit universities in ways that private students do not.

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116. 726 P.2d 413 (Utah 1986); see also Orr, 1997 WL 143600, at *2. The Tenth Circuit considered Beach as the governing Utah case. See id. The court states that Beach defined the boundaries of Utah law. See id.

117. See Beach, at 413.

118. See Orr, 1997 WL 143600, at *2. In Beach, the Utah Supreme Court found no special duty of care because universities have an educational, not custodial, relationship with their students. See Beach, 726 P.2d at 419. This holding was not unique, which is reflected by the disappearance of the in loco parentis doctrine. For a discussion of the in loco parentis doctrine, see supra notes 16-23 and accompanying text.


120. See Whang, supra note 9, at 49; see also, Emerick, supra note 8, at 887-88. Not only would the class of potential litigants be strictly limited, but it is wrong to deny justice based on a fear of increased litigation. See id. "In addition, the time and expense attendant to bringing a lawsuit — attorneys' fees, expert witness fees and court costs - render it unlikely that a flood of litigation will ensue if this cause of action is recognized." Id. at 888 (referring specifically to recognizing cause of action by student-athletes against universities) (citations omitted).

121. See Orr, 1997 WL 143600, at *2. The court relied completely on the Beach case. See id. Not only is it outdated, but the facts differ completely from those in Orr. See id. Recent cases have dealt specifically with the relationship between student-athletes and universities. The Orr court did not consider this and continues to rely on a case involving a private student rather than a student-athlete. See id.

122. See supra notes 39-63 and accompanying text.
123. See supra notes 56-63 and accompanying text.
124. See supra note 59 and accompanying text.
B. Liability of Coaches

As discussed previously, courts have been increasingly willing to impose a duty of care on universities toward their student-athletes.\textsuperscript{125} None of the cases, however, has involved a suit against a university coach.\textsuperscript{126} Injured student-athletes, however, do sometimes sue their coaches because of the direct control that coaches exert over athletes and athletic events.\textsuperscript{127} This Section discusses the basis for coach liability and the duties that a coach owes to a student-athlete.\textsuperscript{128}

Generally, the basis of liability for coaches is negligence.\textsuperscript{129} To prevail on a negligence theory, an athlete must first prove that the coach breached the requisite duty of care.\textsuperscript{130} A coach owes to athletes a duty of reasonable care to avoid creating a foreseeable risk of harm.\textsuperscript{131}

As long as coaches satisfy this duty, they will not be held liable for injuries resulting from the inherent dangers of the sport.\textsuperscript{132} The responsibilities of a coach can be divided into the following eight duties: (1) supervision; (2) training and instruction; (3) ensuring the proper use of safe equipment; (4) providing competent and responsible personnel; (5) warning of latent dangers; (6) providing prompt and proper medical care; (7) preventing injured ath-

\textsuperscript{125} For a discussion of the recent change in the courts, see supra notes 64-112 and accompanying text.

\textsuperscript{126} For a discussion of the four cases, see supra notes 64-127 and accompanying text.

\textsuperscript{127} See Anthony S. McCaskey and Kenneth W. Biedzynski, A Guide to the Legal Liability of Coaches for a Sports Participant's Injuries, 6 SETON HALL J. SPORT L. 7, 8 (1996). Coaches are frequently the principal defendants in lawsuits brought by injured athletes. See id. at 10-11. Coaches are under enormous pressure from universities to succeed and often their salaries and bonuses are based on their team's success. See Emerick, supra note 8, at 876. As a result, coaches are both directly and indirectly responsible for an athlete's progress. See id. There is often a "win-at-all-costs" mentality, and the best interests of the athlete are not always considered. See id. It is at this point that coaches may become liable for negligence. See id.

\textsuperscript{128} For a discussion of the liability of coaches and the duties coaches owe to student-athletes, see infra notes 133-48 and accompanying text.

\textsuperscript{129} See McCaskey and Biedzynski, supra note 127, at 12-13.

\textsuperscript{130} See id. at 14. The four factors necessary to prevail on a negligence claim are:

(1) a duty requiring a person to conform to a standard of conduct that protects others from unreasonable risk of harm; (2) a breach of that duty (i.e., the person's failure to conform to the standard of conduct); (3) a causal connection between the breach of the duty and the resulting injury (i.e., proximate cause and cause in fact); and (4) resulting injury or damages.

Id. at 13-14.

\textsuperscript{131} See George W. Schubert et al., Sports Law § 7.4 at 220.

\textsuperscript{132} See McCaskey and Biedzynski, supra note 127, at 15.
letes from competing; and (8) matching athletes of similar competitive levels.\textsuperscript{133} The main duty of a coach, however, is to minimize the risk of injury to all participants.\textsuperscript{134}

In \textit{Lamorie v. Warner Pacific College},\textsuperscript{135} the Oregon Court of Appeals held a basketball coach liable for allowing an injured athlete to participate in a basketball scrimmage.\textsuperscript{136} The court concluded that the coach breached his duty of care by requiring Lamorie to participate in the scrimmage, which created an unreasonable risk of further injury.\textsuperscript{137}

It is interesting to note that Orr only sued the university and not his coaches.\textsuperscript{138} Orr may have prevailed, however, if he had sued his coaches for negligence under the argument that his coaches violated their duty to prevent an injured athlete from competing - the same argument that succeeded in \textit{Lamorie}.\textsuperscript{139} Although Orr's coaches knew that he had suffered a back injury, they continued to pressure him to play.\textsuperscript{140}

Courts have also imposed liability on third parties for the actions of coaches, under the theories of respondeat superior and vicarious liability.\textsuperscript{141} For example, if a coach is negligent, the university that employs the coach may be held liable under the doctrine of respondeat superior.\textsuperscript{142} This makes sense because coaches are the agents who realize the goals that universities set for their

\textsuperscript{133} See id. at 15-16.
\textsuperscript{134} See id. at 15. The term "participants" is defined broadly. See id. The term encompasses all people involved in the sports activity. See id. Therefore, this includes referees, assistants, team physicians and even scorekeepers. See McCaskey and Biedzynski, supra note 127, at 15.
\textsuperscript{135} 850 P.2d 401 (Or. Ct. App. 1993).
\textsuperscript{136} See id. at 402. The injured athlete, Lamorie, received a basketball scholarship to attend Warner Pacific College. See id. at 401. While playing football at his church, Lamorie injured his nose and was required to wear a nose cast. See id. Lamorie told his coach that doctors advised him not to participate in any athletic exercises. See id. There was bruising and his eyes were almost swollen shut. See id. Despite these warnings and Lamorie's visible injuries, the coach asked him to participate in a basketball scrimmage. See id. at 402. Fearful of losing his scholarship, Lamorie participated in the scrimmage and further aggravated his injuries. See id.
\textsuperscript{137} See id.
\textsuperscript{138} See Orr v. Brigham Young University, No. 96-4015, 1997 WL 143600, at *1 (10th Cir. Mar. 31, 1997).
\textsuperscript{139} See McCaskey and Biedzynski, supra note 127, at 15. Whenever there is an unreasonable risk that an athlete may aggravate an existing injury, a coach may be held liable for negligence. See id. at 33-34.
\textsuperscript{140} See Orr, 1997 WL 143600, at *1.
\textsuperscript{141} See McCaskey and Biedzynski, supra note 127, at 40-41.
\textsuperscript{142} See id.
sports teams by directing student-athletes.\textsuperscript{143} Although student-athletes have sometimes succeeded in suits against their universities under the theories of respondeat superior and vicarious liability, negligence suits against coaches are more common.

IV. Conclusion

It is clear that situations exist in which a university should owe a duty of care to its student-athletes.\textsuperscript{144} This duty should exist for two main reasons. First, the athletic endeavors of student-athletes benefit the universities they represent. These benefits, both economic and non-economic, are substantial.\textsuperscript{145} Second, universities exercise control over student-athletes that significantly exceeds the control that universities exercise over private students.\textsuperscript{146} As a result, a duty of care that exceeds the duty owed to regular students should exist.\textsuperscript{147}

Courts have faced several related issues. First, courts have struggled to determine the appropriate extent of such a heightened duty of care.\textsuperscript{148} Second, although courts have recognized a heightened duty to protect high school students from injuries, they have been more reluctant to recognize a heightened duty at the college level, though that is slowly changing.\textsuperscript{149} Finally, courts have found it difficult to adopt clear rules regarding liability to student-athletes because establishing the appropriate duty requires a fact-specific inquiry in many cases.\textsuperscript{150}

Since student-athletes are amateur athletes who do not reap the financial benefits that professional athletes enjoy, some apparatus should exist to compensate student-athletes who suffer avoidable

\begin{footnotes}
\textsuperscript{143} See Mitten, supra note 1, at 135. For example, many scholarships are renewable, and a player who does not comply with the coach risks losing his scholarship at renewal time. See id. Fearing such consequences, many injured student-athletes decide to play. See id.
\textsuperscript{144} See Hollingsworth, supra note 2, at 721.
\textsuperscript{145} See Emerick, supra note 8, at 874. Intercollegiate sport is a multi-million dollar industry that generates revenues for universities through ticket sales, merchandising, television contracts, alumni support and many other sources. See id. Furthermore, universities derive collateral benefits such as publicity, visibility and increased admission applications. See id.
\textsuperscript{146} See Whang, supra note 9, at 50-51.
\textsuperscript{147} See Emerick, supra note 8, at 888-89. Due to the extensive benefits that athletes provide to universities, athletic programs often receive special status within the university. See id. at 875. Similarly, it is fair that athletes receive special status in suits against universities. See id. at 888-89.
\textsuperscript{148} See Hollingsworth, supra note 2, at 721.
\textsuperscript{149} See id. at 713-15.
\textsuperscript{150} See Hirshberg, supra note 16, at 222.
\end{footnotes}
injuries. By consistently recognizing that universities owe student-athletes a heightened duty of care, courts can ensure that student-athletes will receive adequate protection. A university that reaps the benefits of its intercollegiate athletic program should compensate a student-athlete for a foreseeable injury that was caused because the university required the student-athlete to undertake an unreasonable risk.

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