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ABSTRACT

Legal aspects and implications affecting college and university housing administration are unpredictable, unsettled, and subject to change. The complete practical guide to the everyday legal answers for campus housing simply does not exist. This document presents some specific legal considerations involved in housing that may affect the management roles of housing officers. The topics are discussed by a recent graduate of the Tulane Law School who was a student member of the Housing Office staff, and a junior in the Tulane Law School who is a student advisor in housing. The specific areas covered are: (1) the validity of a housing contract signed by a minor; (2) legal responsibility of student staff for acts of negligence; (3) legal responsibility for storage of students' belongings; (4) search and seizure in residence halls; (5) curfews in women's dormitories; (6) responsibility for unauthorized visitors and casual travelers in campus residence halls; and (7) responsibility for theft of personal property in campus housing. (HS)

SOME LEGAL ASPECTS OF CAMPUS HOUSING

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Law is the set of rules that have been established by man over a period of many hundreds of years of experience to make it possible for society to exist. It is still growing and changing as society grows and changes. The law is not a rigidly fixed body of rules, but rather a complex interweaving of state and Federal court decisions, state and Federal statutes, regulations and procedures. Interpretations of laws by different courts, small variations in the circumstances of a case, or legal technicalities may cause very different conclusions in two seemingly similar situations. There are no final answers. The law lives, grows and changes. No book or set of books, no lawyer or battery of legal counsel, can tell you with complete assurance what is legally "right" or what is legally "wrong" or what the final outcome of a particular case will be.

The concept of law can best be illustrated by quoting from the precepts of Justinian's Institutes of Roman Law: "Live honorable; give every man his due; repair damage wrongfully caused; fulfill one's promises." These precepts can be viewed as the basis of our conception of the law; despite attacks on many sides and despite modifications, the study and application of law is based on such axioms.

Legal aspects and implications affecting College and University housing administration are especially unpredictable, unsettled and subject to change. A discussion of this field usually raises as many questions as it answers. The complete practical guide to the everyday legal answers for campus housing administrators simply does not exist.

Now that your faith, if you in fact had any, in getting all the answers to your legal questions on campus housing has been reduced to a realistic level, let me deflate your anticipation further. I am becoming more and more convinced that College and University administrators are too preoccupied with legalistic approaches to their problems and some use the law, or what they think the law to be, as an excuse for their decisions. Many of us consider ourselves to be legal experts in our field, applying definitive answers to legal questions that are still unsettled.

Now don't misunderstand me. I firmly believe that we all must have a general awareness and appreciation for legal principles and applications. As managers, we are dealing with a multitude of responsibilities that require a basic knowledge and proper application of the law. I am merely suggesting that there is no substitute for good management principles, reasonable and fair decisions, and sound logic.

It is not my position that College and University administrators have brought this legalistic enigma on themselves all together. The changes that have occurred on campus in the past few years--confrontations, student power, relationships with the community, drugs, decline of social rules, to mention a few, have caused an awakening of the academic community to the possible legal implications affecting higher education. In the past, few of the problems arising on the campus

were viewed from a legal perspective. Today, the reverse is true.

So what is the answer? First, I believe that we must become better informed on the essentials of law and our legal system. Through a basic understanding of legal principles and concepts, we will be able to act or react objectively in discharging our responsibilities and avoid the preoccupation with pseudo-legalism.

Secondly, we must combine our legal perspective with considerations of the educational role expected of us on the college campus. A strict letter-of-the-law interpretation does not always serve the best interest of the institution or its community members. I submit that decisions made in reliance on legalistic considerations only, that do not relate to or support the educational goals and objectives of the University, are counter-productive.

Thirdly, we must put our house in order by reviewing our policies and procedures; eliminating the obsolete, modifying the old, clarifying the vague, and incorporating the new. Sound policies and procedures established with a legal perspective and conforming to the institution's purpose will best serve to prepare us for the complexing problems that we must deal with on the campus.

Much has been written and spoken on the legal considerations affecting student rights. Recent attention by the courts to due process requirements for disciplinary action, social and conduct regulations on campus, freedom of speech, and limits of student protest, to mention a few, has been frequent. To the contrary, legal considerations affecting housing managers in the everyday administration of the residence facilities has received little comment.

Let me now turn to some of those specific legal considerations involved in housing that may affect us in our management role as Housing Officers. I will present the legal opinions, sometimes in agreement and other times in conflict,

researched and written by John Devlin and Frank Yohan. Mr. Devlin is a recent graduate of the Tulane Law School and a former student member of the Housing Office staff. Mr. Yohan is a junior in the Tulane Law School and a Student Adviser in Housing.

I. VALIDITY OF THE HOUSING CONTRACT SIGNED BY A MINOR

Mr. Devlin's Opinion:

The general rule in this area is that a minor may avoid or disaffirm any contract made by him whether or not the contract is fair or unfair, reasonable or unreasonable, or whether or not the party is aware of the minor's disabilities. In such cases the contract is not void ab initio but rather is voidable only upon the action of the minor. It is also a fact that the approval by a parent of his infant child's contract does not necessarily validate it.

There is an exception to the general rule that a minor may disaffirm any contract made by himself. The exception lies in the area of necessities. The term "necessities" is flexible and is not limited to any specific group of articles but usually applies to things supplying the minor's actual personal needs, either of his body or mind.

The most usual things which are considered necessities are those answering the bodily needs of the infant, without which the individual cannot reasonably exist, and which are necessary for his support, use, maintenance, and comfort; such as, food, housing, clothing, etc.

Lodging is a "necessity," and the infant may normally be bound for the charges incurred. However, where the parent has the ability and is willing to support the minor child, lodging furnished to the child without the parent's consent may not be a "necessity" for which the minor is liable.

What would be the ruling as to whether a student under 21 years of age legally binds himself to a housing contract that does not include his parent's signature? Legal decisions in this area are very sparse. Consequently, we do not have a lot to guide us. However, the courts have held that a proper education is a "necessity," so it would follow that a contract by a minor for educational expenses would be binding. But, what is a proper education will depend on the individual's circumstances. Re: Siegel & Hodges v. Hodges, 191 N.Y.S. 2d 984 (1959).

A Florida Appellate Court in 1967 supported the lower court's finding that an automobile used by a minor to carry on his school, business, and social activities was a "necessity" for the minor. The court, therefore, prevented his disaffirmance of the contract to purchase. Re: Rose v. Sheehan Buick, Inc., 204 So. 2d 903 (Fla. App. 1967).

With only these cases as indications, the question whether or not a minor can bind himself to a housing contract is still up in air. But it does seem highly possible that if the courts would hold a car used for school as a necessity, it would also hold that housing on campus is a necessity. Legally speaking, however, until that time, I would advise the continuation of the practice of requiring the parent's signature on housing contracts.

Mr. Yohan's Opinion:

It might be interesting to note that campus housing contracts may be viewed as strictly lodging agreements or simply as something "incidental" to a minor's higher education. But why make a distinction here at all? The reason may be that if thought of simply as lodging contracts and no more, then these bargains may be enforceable. But if approached as a substantive part of the education process, the agreement usually would not be binding. Lodging is a "necessity" for the

payment of which a minor may be bound. Re: Burnand v. Irigoyen, 186 P. 2d 417, 30 Cal. 2d 861 (1947). But a college or professional education has often been held not to be a "necessity" for a minor. Re: La Salle Extension University v. Campbell, 36A. 2d 397, 131 N.J. Law 343 (1944).

So, should one approach these dorm contracts as lodging agreements per se or as something incidental to the students' education? If viewed as the former, perhaps a stronger position for the housing office would ensue. As yet, no one jurisdiction seems willing to cope with this interesting hypothetical.

Keep in mind, however, that as Mr. Devlin pointed out previously, circumstances may exist where even the whole process of higher education itself will be considered a "necessity" as a matter of fact. But even this finding is rare. A common school education has almost always been held to be a necessity, while a form of higher education ordinarily, although not invariably, is not. Re: Reed Brothers v. Giberson, 54 A. 2d 535, 143, Me. 4 (1947).

Consequently, I must concur with Mr. Devlin's conclusion, but for these slightly varying reasons.

I would also advise the continuation of the practice of asking for a parent's signature on housing contracts until that time when the courts may favorably resolve this so-called "lodging-education" dilemma.

II. LEGAL RESPONSIBILITY OF STUDENT STAFF FOR ACTS OF NEGLIGENCE

Mr. Devlin's Opinion:

The relationship generated by interaction between University, residence hall adviser, and student is a curious one. If the residence hall adviser is negligent in his duties and a student suffers as a result of this negligence, who is legally responsible? The University or the residence hall adviser? This question may be

approached under the doctrine of agency or of respondent superior.

Speaking first of the doctrine of agency, the university would be the principal and the residence hall adviser the agent. According to this doctrine, whether an agent is acting on his own behalf or for another (the University), an agent who violates a duty which he owes to a 3rd person (student) is answerable to the injured party for the consequences. Even if acting at the request or even at the command or direction of the principal, an agent is still personally liable unless he is exercising a privilege of the principal to commit the act.

In accordance with these principles, an agent, merely because of his relationship as an agent, or because of the additional fact that he has acted at the direction or command of his employer, cannot escape or exempt himself from liability to a 3rd person for his own negligence or his own positive wrongs. Thus, if an adviser in the residence hall is negligent and a student in his hall suffered as a consequence of this negligence, under the doctrine of agency the adviser would be liable to the student for any damages suffered.

The doctrine of respondent superior is usually relied on as the basis of liability of a master (university) for injuries to 3rd persons (students) caused by the acts or omissions of his servants (residence hall advisers). The relation of master and servant, as fixing liability on one person for the acts of another, i.e. on the university for the acts of the residence hall adviser, is usually understood to arise when one person subordinately serves another, both consenting thereto. The relation may exist outside of actual working time. However, the existence of definite hours of labor has been declared to be a requisite for the relationship. In addition, the alleged master must have the right

to select, direct, control, and discharge the alleged servant.

Thus, in a case of negligence by a resident hall adviser, two approaches by the injured student are possible: agency and respondent superior. Agency suggests that the residence hall adviser himself is liable. Respondent superior would be relied upon to hold the university responsible. What normally happens is that the injured student sues the party from which he is most likely to collect. If the university is a state institution and cannot be sued without the special approval of the legislature, the student may chose to sue the residence hall adviser. If the residence hall adviser has limited resources, it may be more advisable to sue a private university under the doctrine of respondent superior.

Mr. Yohan's Opinion:

I will assume that some act of omission or commission by an adviser caused injury to a student, and that the injured student now seeks action for damages. Anyone suing for injuries arising from an alleged negligent act by an authorized agent has the burden of proving a duty and the breach thereof by such agent. This burden, since it involves civil and not criminal litigation, need only be carried by a preponderance of the evidence rather than beyond a reasonable doubt.

Whenever a servant or agent wilfully disobeys the orders of his superior, then he takes upon himself the burden of showing a lawful reason for such disobedience. Where evidence shows that injury to another occurred through an agent's violation of a rule of the principal, the burden is on the agent to show that he had no actual knowledge of the rule; that its existence had been so concealed or ineffectively published that he could not by the exercise of ordinary care on his part have acquired such knowledge.

III. LEGAL RESPONSIBILITY FOR STORAGE OF STUDENTS' BELONGINGS

Mr. Devlin's Opinion:

The keeping of one's property by another falls into the common law category of bailment. There are different kinds of bailment, two of which I will discuss here as relevant to the topic at hand. Before discussing them, one should know that in this discussion the bailor represents the student and the bailee the university.

The first kind of bailment to be discussed is that for the sole benefit of the bailor, i.e. the student. In other words, the student stores property belonging to him in designated university areas. The key to this type of bailment is that there is no charge made by the university for the service it is rendering, thus it is for the sole benefit of the bailor (student).

In a bailment for the sole benefit of the bailor, the bailee has the duty to exercise some care for the property of the bailor and is held merely to the exercise of slight care. It is ordinarily stated that where a bailment is for the sole benefit of the bailor, the bailee is liable only for gross negligence or bad faith, willful act, or fraud. Gross negligence has been defined as positive neglect to exercise any or very slight care, or an omission of the care which even the most inattentive and thoughtless never fail to take of their own concerns.

For example, suppose leaky pipes in the wall of a storage room dripped water onto the floor of the room all summer long without detection and the student's property was ruined. This would constitute negligence in that the condition should have been detected and remedied. Now suppose a university employee knew of the water standing in the storage room and took no action to remedy it. In such a case the university could be held liable for gross negligence and even the student who stored his property for no charge could collect damages from the uni-

versity.

The second kind of bailment I will discuss is one where there is a mutual benefit, i.e. the student gets his property stored and the university receives compensation. In such a case the university would probably be held liable for simple negligence as well as gross negligence, since the bailee owes the bailor a greater duty of care. Thus, in the example above the university would be liable for the condition that went undetected throughout the summer, provided the student had paid the storage fee.

Regarding the matter of compensation, I think it would be well to include in this discussion the argument that the payment of room rent entitles the student to certain services. Therefore, the payment of rent might constitute compensation for storage, thereby making the university liable for simple negligence in the event a student's personal belongings are damaged.

Mr. Yohan's Opinion:

I would like to discuss one additional topic in the bailor-bailee relationship, and that is the whole matter of the burden of proof and presumption of negligence. (Remember again that the bailor is the student and the bailee is the university.)

The rule adopted under the more modern decisions is that any showing by the bailor of loss or damage to his property usually creates a sufficient prima facie case against the bailee to put him on the defensive. Thus, where any goods are surrendered to a bailee in good condition and are returned in a damaged state, or lost or not returned at all, the law presumes that the bailee was at fault, and places the burden on him of proving that the loss or damage was due to other causes consistent with due care on his part. Re: Eglin's University Garage Corp. v. Rougelot, 198 So. 2d 547 (La. App. 1967); Sampson v. Birkeland, 63 Ill. App.

2d 178, 211 N.E. 2d 139 (1965).

If the bailee does not sustain such burden, the bailor becomes entitled as a matter of law to a verdict in his favor. Re: Dispeker v. New Southern Hotel Co., 213 Tenn. 378 S.W. 2d 904 (1963). This general rule applies regardless of whether the bailment is one for the sole benefit of the bailor or of the type where there is mutual benefit. Re: Gaskins v. Fowler Gin Co., 218 S.C. 201, 62 S.E. 2d 119 (1950).

As far as negligence in this area is concerned, it has been held that liability of the bailee does not necessarily follow because there is loss or damage and no explanation for it, since in order to recover for bailed goods lost or damaged, there must be evidence of negligence. Re: I. DuPont de Nemours & Co. v. Berm Studios, Inc., 211 Pa. Super. 352, 236 A. 2d 555 (1967).

Thus, I can only conclude that in order to throw the burden of evidence on the bailee (university), it is essential that the bailor affirmatively show damage to the item that could not have occurred had the appropriate amount of care been exercised. As far as loss is concerned, the absence of the bailed article from the premises is, of course, all that need be shown.

IV. SEARCH & SEIZURE IN RESIDENCE HALLS

Mr. Devlin's Opinion:

The term "search" as applied to searches and seizures is an examination of a man's house, buildings, or premises, or of his person, with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt, to be used in the prosecution of a criminal action for some crime or offense with which he is charged.

The 4th Amendment of the Constitution of the U.S. contains a provision against

unreasonable searches and seizures and the abuse of search warrants. It forbids unreasonable searches and seizures and also provides for the specifying of certain particulars to be observed before issuing warrants. The guarantees of the 4th Amendment express the conviction that the right to search and seizure should not be left to the discretion of the police, but should be subject to the requirement of previous judicial sanction wherever possible.

The purpose of the constitutional guarantee against unreasonable searches and seizures is to secure one's right to unmolested privacy in his occupied premises and freedom from disturbance of the possession of articles and things forbidden by such provisions to be searched for without a warrant. Constitutional provision prohibiting unreasonable search and seizure are intended to protect against action by the government, its officials and agents, and neither the federal provision nor those of the states have any application to the unauthorized acts of private individuals.

Since the right of search and seizure is in derogation of the constitutional guarantees, it is the general rule that statutes authorizing or regulating searches and seizures or search warrants must be strictly construed against the state and liberally construed in favor of the individual. What constitutes a reasonable or unreasonable search and seizure in any particular case is purely a judicial question, determinable from a consideration of the circumstances involved, including the purpose of the search, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, the character of the articles procurred, and the nature and importance of the crime suspected.

The protection under the various constitutions or bills of rights against unreasonable searches and seizures applies to dwellings, houses, homes, and

residences. A rooming house is also protected against unreasonable search and seizure, as is a person's room in an apartment house, hotel, rooming or boarding house, or in a tourist camp.

The constitutional immunity from unreasonable searches and seizures may be waived, as by a voluntary invitation or consent to a search and seizure. The general rule is that immunity from unreasonable searches and seizures cannot be waived by anyone except the person whose rights are invaded.

It is well settled that a reasonable search without a search warrant is justifiable where it is incident to a lawful arrest. A seizure, on such a search, of evidence related to the crime, as well as the instruments of its commission and of means and implements of escape, is permitted. A search and seizure without a search warrant may be made where there is a lawful arrest for an offense committed in the presence of an officer.

Search warrants may be issued only by authorized officers and one issued by an officer without the power so to act is a nullity, and a search made pursuant thereto is unreasonable. At common law search warrants could be issued by justices of the peace. However, at the present time the authority of officers to issue search warrants is generally regulated by statutes, the limits of such authority being strictly confined to the power granted by the statute.

A valid search warrant may issue only on an application therefore under oath or affirmation, in the form of a complaint or affidavit, sufficient in form and substance to support the warrant. Where a reasonable belief or probable cause for believing that an offense is being committed or has been committed will justify an arrest therefore, it will also justify a search and seizure incident thereto without a search warrant, but a search and seizure without probable cause is unreasonable. The probable cause must exist before, and not after the search.

Probable cause for the issuance of a search warrant is the existence of facts and circumstances which would excite an honest belief in a reasonable mind, acting on all the facts and circumstances within the magistrate's knowledge, that the charge made by the applicant for the warrant is true. A complaint or affidavit which merely contains a statement of the suspicion of the affiant, instead of a statement of his belief, with reason to believe, as required by statute, is insufficient; mere suspicion, however strong, is insufficient to constitute the required probable cause, as is likewise, mere rumor.

In accordance with constitutional and statutory requirements, the affidavit or complaint for a search warrant must contain a sufficient description of the place or thing to be searched. At early common law the search warrant seems to have been limited to the daytime and insofar as reasonably practicable search warrants should always be executed in the daytime. Thus, it has been held, apart from statute, that if searches are to be made at night, their authority there for should appear in the warrant, and that warrants which contain no direction or permission for service in the night-time must be served in the daytime.

A student has the right to be free from unreasonable search and seizures, and a tax supported public college may not compel a waiver of that right as a condition precedent to admission. On the other hand, the college has the affirmative obligation to promulgate and enforce reasonable regulations designed to protect campus order and discipline and to promote environment consistent with the educational process.

The constitutional boundary line between the right of school authorities to search residence hall rooms, and the right of a dormitory resident to privacy has only come into question in the last few years. This issue was dealt with in 1968 in the case of Moore v. Student Affairs Committee of Troy State Univer-

sity, 284 F. Supp. 725 (M.D. Ala. 1968). The court held that the right of a dormitory resident to privacy must be based on a reasonable belief on the part of college authorities that a student is using his room for a purpose which is illegal or which would otherwise seriously interfere with campus discipline.

Thus, after the Moore case, the university could search a student's room without a search warrant based only on a standard of "reasonableness." In comparison to the relatively few cases in this area that have followed Moore, this represented a weak standard, i.e. less than full 4th Amendment guarantees. However, the facts in Moore showed a search solely by the university and there was no criminal prosecution involved.

Would there be any difference if the search were made by police rather than by the university, i.e. where there was a possibility of criminal prosecution? Piazzola v. Watkins, 316 F. Supp. 624 (M.D. Ala. 1970) brought this very question to the courts. The case concerns the warrantless search of student dormitory rooms, without the student's consent, by state narcotics agents who entered the rooms with university consent and cooperation pursuant to a school regulation allowing such searches when the administration "deems it necessary."

The district court found that, although the school's special relationship to its students permits searches under a relaxed standard of "reasonableness" (as in Moore) which would ordinarily infringe upon one's 4th Amendment rights, this special relationship cannot be delegated to the state for the purpose of criminal prosecution. So briefly, Piazzola held that where the search is made by the police, a search warrant must be obtained before entering the student's room, even if done with the university's permission.

Now suppose a narcotics agent and state trooper, possessing a warrant for the search of a student's room for marijuana, come to your campus where they meet

the Dean of Men, and in the company of the dormitory head resident, proceed to the student's room. Suppose there was no announcement of identity or purpose prior to entry into the room which was achieved by use of the head resident's pass key. After entry, the student is told the purpose of the visit and shown the warrant. Marijuana is discovered and the student is arrested. Do you think the student's arrest and later conviction would stand?

These were the facts in Commonwealth v. McCloskey, 272 A. 2d 271 (Pa. Super. Dec. 1970). On these facts, the court held that since the evidence indicates a violation of the law, the search was not thereby justified. The court pointed out that the 4th Amendment prohibition against unreasonable search and seizure requires that unless there are exigent circumstances, a police officer must give notice of his identity and purpose before entering private premises to conduct a search. Here there were no exigent circumstances because there was no other exit from the room, no reason to suspect the student knew of the officers' presence and purpose prior to entry, and no available means for disposal of five pounds of marijuana.

The court went on to say that a dormitory room is analagous to an apartment or a hotel room. The defendant (student) rented the dormitory room for a certain period of time, agreeing to abide by the rules established by his lessor, the university. As in most rental situations, the lessor (university), reserved the right to check the room for damages, wear and unauthorized appliances. Such right of the lessor, however, does not mean the student was not entitled to have a "reasonable expectation of freedom from governmental intrusion," or that he gave consent to the police search, or gave the university authority to consent to such a search.

The student's dormitory room is now on equal par with your residence and mine.

They are now beginning to receive the full benefit of the 4th Amendment. To quote the court: "University students are adults. The dorm is a home and it must be inviolate against unlawful search and seizure. To suggest that the student who lives off campus in a boarding house is protected but that one who occupies a dormitory room waives his constitutional liberties is at war with reason, logic and law." Re: People v. Cohen, 57 Misc. 2d 366, 292 N.Y.S. 2d 706 (1968), aff'd, 61 Misc. 2d 858, 306 N.Y.S. 2d 788 (1968).

Mr. Yohan's Opinion:

Although Mr. Devlin has done a very thorough job in this area, I must take issue with his reliance on the Moore decision.

According to Dixon v. Alabama Board of Education, 294, F. 2d 150 (5th Cir. 1961), the premise was that the interest of a university in maintaining discipline or implementing campus rules to regulate student conduct is not sufficient to deprive students of fundamental Constitutional rights. This seems to blatantly contradict the Moore holding which Mr. Devlin discussed. And since Moore did not attempt to overtly overturn the Dixon case, the former must be viewed with some reservations.

I believe that Moore is deficient in that it completely fails to meaningfully deal with this whole search and seizure concept in the light of recent Supreme Court decisions, namely Spinelli v. U.S., 89 S, Ct. 584 (1969), Mancusi v. De Forte, 392 U.S. 364 (1968), and Terry v. Ohio, 392 U.S. 1 (1968). The Court is always concerned with what a person reasonably expects when he uses a specified area, not with the status of the individual invoking the 4th Amendment protections. Thus, it becomes clear that when a student lives on campus he should be under the same Constitutional protection as one living off, or as anyone else in the country, for that matter. There can be no "double standard" here.

Even though many colleges specify by regulation that it retains or reserves the right to inspect or re-enter the dormitory room, the great imbalance in bargaining power in adhesion contracts of this type would make most courts set them aside. Furthermore, let's not forget that the 4th Amendment "protects people, not places." Re: Katz v. U.S. 389 U.S. 347 (1967).

Since students are persons under the Constitution just like anyone else, their faith in purchasing dorm rooms as implying private use protects the room from warrantless intrusions. Thus, these types of searches of housing units are per se unreasonable unless there exists some paramount interest or concern on the part of the school to conduct the search. Consequently, any sweeping interpretation of Moore should be avoided. The test for balancing any competing interests between the student's right to privacy and the university's concern for safety and order is not the Moore standard of reasonableness, but the Terry and Katz concern for "limiting warrantless invasions of an individual's privacy to those situations where the preservation of society requires it."

Clearly then, a series of statements by various "reliable" students that a bomb has been planted in a particular dorm room would justify a warrantless intrusion. But in other situations the justification may not be so evident.

I would advise that in those instances where the line between the rights of students and the college is not so clearly discernible, it would be better to conduct a search based upon warrant rather than upon "reasonableness." Otherwise, in these "gray areas" a heavy burden will be placed upon the school and police officials to show that there was a paramount interest or concern. Also, the possibility of a civil suit for illegal entry, trespass, and invasion of right of privacy may ensue.

V. CURFEWS IN WOMEN'S DORMITORIES

Mr. Yohan's Opinion:

Can a drastic change in social regulations by a girls' college constitute a breach of its implied contract with a student or her parents? In Jones v. Vassar College, 299 N.Y.S. 2d 283 (1969), the mother of a female student there wanted to restrain Vassar from adopting any rules which would allow unlimited visitation hours for men. The court stated:

> "In academic communities greater freedoms may prevail than in society at large and the subtle fixing of these limits should, to a great degree, be left to the educational institution itself, as long as they are not arbitrary, capricious, or unreasonable." (underlining added for emphasis; see Jones v. Vassar College, 299 N.Y.S. 2d 283, 287 (1969).

The judiciary will usually exercise restraint in questioning the wisdom of social guidelines or their application, since such matters are ordinarily in the realm of school administrators rather than the courts. Private universities are governed on the principle of academic self-regulation, free from judicial restraints. In Barker v. Hardway, 283 F. Supp. 228 (1968), the court stated: "It is the privilege of a college, . . . , to promulgate and enforce rules and regulations for the social conduct of students without judicial interference." Consequently, if we interpret the Vassar decision broadly, a restriction in any private institution may also be valid and enforceable.

Curfews in Women's dormitories may be enforced and be free from court scrutiny as long as they are not "arbitrary, capricious, or unreasonable." But what exactly does this phrase mean, and how should it be applied? Although this would depend upon the individual circumstances, any adopted regulations like this must be "rational in scope, clear in meaning, and narrow in interpretation." Re: Soglin v. Kauffman, 418 F. 2d 163 (C.A. Wis. 1969).

VI. RESPONSIBILITY FOR UNAUTHORIZED VISITORS AND CASUAL TRAVELERS IN CAMPUS RESIDENCE HALLS

Mr. Yohan's Opinion:

A college is not liable for the torts of outsiders in the absence of negligence on the part of the college. Re: Burns v. Catholic University of America, 254 F. 2d 334 (1958). It is usually necessary for the plaintiff to show negligence on the part of the defendant institution's agents, servants, or employees. If any unlawful act or civil wrong is committed by an unauthorized visitor or casual traveler, the injured party would certainly have a right to sue the person who did it. It is inconceivable, however, how anyone can expect a university to be the insurer of the safety of all persons who are visited by outsiders. This is especially true if these so-called visitors are not overtly dangerous and are completely beyond the control of the college.

Miller v. Concordia Teachers College of Seward, 296 Fed. 2d 100 (1961) considered the relationship of the college to the college's employees to third parties. It was decided that the school was immune from liability for providing control over social aspects of student conduct. If this ruling pertains to students within dorms, I fail to see how it could not apply to the actions of unauthorized visitors and casual travelers.

But suppose that some wrongful act is done to a visitor or traveler, rather than by him. Suppose further that it is committed by an adviser or custodian. Then a private university may be held liable to those third persons for misfeasance, negligence, or omission of duty of its agents (advisers) or employees (custodians), and the agent or employee is also liable to the injured party for their own misfeasances and positive wrongs. But the adviser as an agent is not ordinarily liable to students or other third persons for his own non-feasance or

omission of duty in the course of his employment.

But advisers, if considered as agents of the university, may not be held liable unless it can be shown that it was the result of some affirmative act on their part. Since the student occupies the position of "lessee" in the landlord-tenant relationship within the university, a high degree of care is owed to him. But if some traveler's or visitor's business was not in the furtherance of a benefit to the student or school, then surely a lower degree of care is all that is required.

VII. RESPONSIBILITY FOR THEFT OF PERSONAL PROPERTY IN CAMPUS HOUSING

Mr. Yohan's Opinion:

If a student should have property stolen from his dorm room, can anyone really be held responsible? Usually the duty of the school to use reasonable care in protecting lives and property is at an end when a student fails to exercise any care or individual sense of responsibility on his own. In other words, how can a university be expected to be held liable if a student leaves his door unlocked and there is a subsequent theft? The legal concept of volenti non fit injuria would apply here. Or, in English, we mean the "voluntary assumption of a known risk." (Emphasis added.) The student knew of the risk involved, assumed it, and therefore must suffer the consequences. But if there had been no adequate warning about the distinct possibility of thievery, then the university may be held responsible for not having provided sufficient notice.

But what if no warning had been given and the student had impliedly invited larceny of his belongings? Then he may be contributorily negligent. In other words, his own lack of due care contributed to the personal injury from which he seeks redress. This may bar any action that he could have against the school.

In Louisiana, if there is any contributory negligence on the part of a plaintiff, his right to collect for damages is barred.

But don't confuse this with the idea of consent. Even leaving a door wide open for thieves does not mean consent! It is still larceny, regardless of the negligence. The law says that an act intended to facilitate the commission of larceny will not be construed as a consent to the taking. Re: People v. Werner, 105 P. 2d 927 (1940). But Werner also said that nothing more must be done than to make it easy for the accused to commit larceny. Thus, any student found stealing may still be criminally answerable for the act, but contributory negligence on the part of the victim may prevent any civil action.

In the bailor-bailee relationship, it may be interesting to note that larceny may be committed by the owner's secret, forcible, or fraudulent taking of his own property from a bailee with the intent of charging the bailee for their value.

Viewed from the context of the landlord-tenant relationship, it is well established that parties to a lease may by agreement exempt the lessor from liability for damages due to theft of the tenant's property through the negligence of the lessor or his agents. We call such a provision in a lease an "exculpatory clause," and, except where statutes expressly provide otherwise, an agreement of this nature is not void as against public policy. So, even in these types of standard housing contracts [sometimes called "adhesion contracts" since there is usually only one form presented for signature which the prospective dorm resident (lessee) can sign or not], it would appear that if there is some conspicuous notice within the bargain itself about this lessor-exemption, then it will be held valid unless there is a contravening state statute to preclude it.