

The evolution of higher education has required courts to reexamine institutional liability for student injury. In response, legal theorists have proposed tort standards that expand an institution's duty. This article argues the proposed standards are lacking on two points. First, current standards treat colleges and universities like a single, rational actor—or, in tort terms, a “reasonable man.” However, organizational theory research suggests colleges and universities are anything but reasonable; Robert Birnbaum's seminal work argues this is due to loose coupling among the many systems that compose an institution. The nature of colleges and universities must be taken into account when developing a workable tort standard. Second, current standards fail to fully consider the policy implications of expanding institutional duty. Legal theorists understand expansion will increase institutional costs but argue risk management and loss spreading will alleviate the negative effects. However, organizational theory research also suggests colleges and universities are poor risk managers. Data on both the prevalence of student injuries and institutional revenue-streams indicate a great deal of loss spreading would therefore have to occur via tuition increases. Tuition increases decrease college access and, by correlation, degree attainment. As there are many public and private benefits to individuals earning a college degree, the policy implications of expanded institutional duty must be taken into account when developing a tort standard. Accordingly, this article proposes courts adopt the Black Box Model, created in order to account for the unique nature of colleges and universities and to balance the public policies of college access and compensation for injured students.