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FDU should not be shielded in student's death

Few would disagree that a tragedy occurred on July 1, 2005 when an intoxicated student at Fairleigh Dickinson University's Florham Park-Madison campus fell to his death from a dormitory room window.

But as is often the case, the legal ramifications are not that clear cut. The parents of the student sued the university and in 2008, a jury in state Superior Court, Morristown, ruled that the student, Keith M. Orzech of Sudbury, Mass., and the university were equally liable. The parents were awarded a judgement from FDU of \$260,000.

The university appealed and this week, the state Appellate Division ruled in FDU's favor. It said that the university was shielded from such litigation by the state's Charitable Immunity Act.

In short, that act gives liability protection to non-profits (FDU is one) that are engaged in charitable purposes, of which providing education is one.

The appeals court said:

"We hold that FDU's negligent failure to enforce its alcohol policy and Orzech's violation of that policy do not negate Orzech's status as a beneficiary of FDU's educational works at the time of the accident."

In that statement, the court acknowledges that FDU "failed to enforce its alcohol policy." Specifically, the plaintiffs argued at trial that campus security was lax and that no checks were made on a campus party in which alcohol was being consumed.

There definitely seems to be grounds for appeal here to the state Supreme Court. We understand the position that the university has a charitable purpose. But if a university fails to enforce its own regulations on alcohol use by students, it seems to us that its charitable immunity should be punctured.

"This issue needs to be clarified by the Supreme Court," said Barry Epstein, the lawyer for the Orzech family. He's right about that and we await the appeal.
