

学校编码: 10384

分类号 密级

学号: 13620081150873

UDC \_\_\_\_\_

厦 门 大 学

硕 士 学 位 论 文

论高校安全保障义务

On the Obligation of Safety Guarantee for Colleges and  
Universities

张 凯

指导教师姓名: 何丽新 教授

专 业 名 称: 法 律 硕 士

论文提交日期: 2011 年 4 月

论文答辩时间: 2011 年 月

学位授予日期: 2011 年 月

答辩委员会主席: \_\_\_\_\_

评 阅 人:

2011 年 月

## 厦门大学学位论文原创性声明

本人呈交的学位论文是本人在导师指导下，独立完成的研究成果。本人在论文写作中参考其他个人或集体已经发表的研究成果，均在文中以适当方式明确标明，并符合法律规范和《厦门大学研究生学术活动规范（试行）》。

另外，该学位论文为（ ）课题（组）的研究成果，获得（ ）课题（组）经费或实验室的资助，在（ ）实验室完成。（请在以上括号内填写课题或课题组负责人或实验室名称，未有此项声明内容的，可以不作特别声明。）

声明人（签名）：

# 厦门大学学位论文著作权使用声明

本人同意厦门大学根据《中华人民共和国学位条例暂行实施办法》等规定保留和使用此学位论文，并向主管部门或其指定机构送交学位论文（包括纸质版和电子版），允许学位论文进入厦门大学图书馆及其数据库被查阅、借阅。本人同意厦门大学将学位论文加入全国博士、硕士学位论文共建单位数据库进行检索，将学位论文的标题和摘要汇编出版，采用影印、缩印或者其它方式合理复制学位论文。

本学位论文属于：

1. 经厦门大学保密委员会审查核定的保密学位论文，  
于 年 月 日解密，解密后适用上述授权。

2. 不保密，适用上述授权。

（请在以上相应括号内打“√”或填上相应内容。保密学位论文应是已经厦门大学保密委员会审定过的学位论文，未经厦门大学保密委员会审定的学位论文均为公开学位论文。此声明栏不填写的，默认为公开学位论文，均适用上述授权。）

声明人（签名）：

年 月 日

## 内 容 摘 要

频繁发生的高校学生伤害事故已经引起了社会各界的极大关注。大学生这一特殊群体肩负着祖国发展的重任，对大学生权益的保护事关祖国的未来。高校在大学生的成才过程中，扮演着十分重要的角色。对高校安全保障义务制度的研究正是基于保护大学生合法权益为目的。本文从一般安全保障义务开始，就我国高校安全保障义务的概念、内容、理论基础、构成要件和归责原则等内容做了较为详细的论述。

本文除了引言和结语外，正文共分四章：

第一章在对一般安全保障义务进行介绍的基础上，重点论述了我国高校安全保障义务的概念和内容，并对高校安全保障义务在国内外发展的基本情况进行了简单的介绍。

第二章论述了高校承担安全保障义务的依据。具体包括“契约理论”、“替代父母关系理论”、“不动产权人与应邀来访者理论和不动产权人与承租人理论”、“可预见性理论”以及经济合理性的要求。

第三章对目前我国高校违反安全保障义务的两种常见类型进行了介绍，认为高校应当负有预防大学生自杀的安全保障义务以及对危险物件或者环境承担对学生的安全保障义务。

第四章主要论述了高校违反安全保障义务的归责原则及责任构成要件。经过分析，本文认为高校违反安全保障义务的归责原则应为过错推定责任原则。其责任构成要件为高校实施了违反安全保障义务的行为、学生遭受了人身和财产损害、高校实施的违反安全保障义务的行为与学生遭受的人身和财产损害的结果之间具有因果关系和高校具有过错四个要件。

**关键词：**安全保障义务； 高校； 大学生

## **Abstract**

The frequent occurrence of personal injury accidents of college students has triggered great concern in society. College students, as a special group, shoulder the responsibility of our country's development, college students' rights protection concerns the future of our country. In the process of college students' development, colleges and universities play an important role. The research on the theory of obligation of safety guarantee for colleges and universities is based on the purpose of protecting the legitimate rights and interests of college students. This paper begins with the general obligation of safety guarantee, and makes a detailed introduction of the obligation of safety guarantee for colleges and universities' concept, content, theoretical basis, structure factors, principles of liability and so on . This paper holds that endowing colleges and universities the obligation of safety guarantee is really necessary.

Besides preface and conclusion, this dissertation is divided into 4 chapters as following:

Chapter 1, on the basis of the introduction of the general obligation of safety guarantee, discusses the concept and content of our country's obligation of safety guarantee for colleges and universities, and makes a simple introduction of the fundamental situation of the development of obligation of safety guarantee for colleges and universities in foreign countries.

Chapter 2 discusses the gist of the obligation of safety guarantee for colleges and universities, including "the Contract Theory", "in Locoparentis Theory", "the Landlord-invitee Theory and the Landlord-tenant Theory", "the Foreseeability Theory" and the requirements of economical reason.

Chapter 3 introduces two common forms of colleges and universities'

violation of its safety guarantee obligation in our country, holding that colleges and universities should have the obligation of safety guarantee to prevent suicide and to take the responsibility of hazardous article and circumstance.

Chapter 4 mainly discusses the principles and the structure factors of liability of colleges and universities' violation of its safety guarantee obligation. By discussing, this paper thinks that the liability which the university violates its safeguard obligation should be attributed to the principle of liability for fault. And the structure factors of liability should include four factors: colleges and universities has violated its safety guarantee obligation, students have suffered personal and property damages, there is causation between the behavior of colleges and universities' violation of its safety guarantee obligation and the students' damage results, colleges and universities, and colleges and universities has made mistakes.

**Keywords:** Safety guarantee obligation; Colleges and universities; College students

引 言.....	1
<b>第一章 高校安全保障义务概述 .....</b>	<b>3</b>
<b>第一节 一般安全保障义务的释义.....</b>	<b>3</b>
一、一般安全保障义务简介.....	3
二、一般安全保障义务的概念.....	3
<b>第二节 高校安全保障义务的释义.....</b>	<b>5</b>
一、高校与学生的法律关系.....	5
二、高校安全保障义务的概念.....	6
<b>第三节 高校安全保障义务的主要内容 .....</b>	<b>7</b>
一、校园危险信息公开义务和教育义务.....	7
二、危险环境提醒义务.....	8
三、提供合理保护措施的义务.....	9
<b>第四节 高校安全保障义务的发展情况.....</b>	<b>10</b>
一、国外高校安全保障义务的发展情况.....	10
二、国内高校安全保障义务的发展情况.....	11
<b>第二章 高校承担安全保障义务的理论依据.....</b>	<b>13</b>
<b>第一节 契约理论 .....</b>	<b>13</b>
一、契约理论的内容.....	13
二、对契约理论的评析.....	13
<b>第二节 “替代父母关系”理论 .....</b>	<b>14</b>
一、“替代父母关系”理论的内容.....	14
二、对“替代父母关系”理论的评析.....	14
<b>第三节 不动产权人与应邀来访者理论和不动产权人与承租人理论.....</b>	<b>15</b>

一、不动产权人与应邀来访者理论和不动产权人与承租人理论的内容.....	15
二、对不动产权人与应邀来访者理论和不动产权人与承租人理论的评析..	15
<b>第四节 可预见性理论.....</b>	<b>16</b>
一、可预见性理论的内容.....	16
二、对可预见性理论的评析.....	16
<b>第五节 经济合理性的要求.....</b>	<b>17</b>
<b>第三章 高校违反安全保障义务的两常见类型.....</b>	<b>18</b>
<b>第一节 高校未尽安全保障义务致学生自杀.....</b>	<b>18</b>
一、高校学生自杀事件现状.....	18
二、高校负有预防大学生自杀的安全保障义务.....	20
<b>第二节 高校未尽安全保障义务致其危险物件或者环境侵害学生权益.....</b>	<b>21</b>
一、高校危险环境侵害学生人身权益的两起典型案例.....	21
二、高校对危险物件或者环境承担的安全保障义务.....	22
<b>第四章 高校违反安全保障义务归责原则及构成要件.....</b>	<b>23</b>
<b>第一节 高校违反安全保障义务的归责原则.....</b>	<b>23</b>
一、过错推定原则.....	23
二、适用过错推定原则的理由.....	23
<b>第二节 高校违反安全保障义务的构成要件.....</b>	<b>24</b>
一、高校实施了违反安全保障义务的行为.....	25
二、学生遭受了人身或财产损害.....	25
三、高校实施的违反安全保障义务的行为与学生遭受的人身和财产损害的结果之间具有因果关系.....	26
四、高校具有过错.....	26
<b>结 语.....</b>	<b>28</b>
<b>参考文献.....</b>	<b>29</b>



致 谢 ..... 31

厦门大学博硕士论文摘要库

厦门大学博硕士学位论文摘要库

**CONTENTS**

<b>Preface .....</b>	<b>1</b>
<b>Chapter 1 Summarize of the Obligation of Safety Guarantee for Colleges and Universities.....</b>	<b>3</b>
<b>Subchapter1 Paraphrase of the General Obligation of Safety Guarantee.....</b>	<b>3</b>
Section1 Brief Introduction of the General Obligation of Safety Guarantee.....	3
Section2 Concept of the General Obligation of Safety Guarantee .....	3
<b>Subchapter2 Paraphrase of the Obligation of Safety Guarantee for Colleges and Universities .....</b>	<b>5</b>
Section1 Legal Relationship Between Students and Colleges and Universities.	5
Section2 Concept of the Obligation of Safety Guarantee for Colleges and Universities .....	6
<b>Subchapter3 The Main Content of the Obligation of Safety Guarantee for Colleges and Universities.....</b>	<b>7</b>
Section1 The Obligation of the Disclosure of the Hazardous Information and Education .....	7
section2 The Obligation of the Warning of the Hazardous Atmosphere.....	8
Section3 The Obligation of Providing Reasonable Protection Measures.....	9
<b>Subchapter4 Development Status of the Obligation of Safety Guarantee for Colleges and Universities.....</b>	<b>10</b>
Section1 The Obligation of Safety Guarantee for Colleges and Universities in Foreign Countries.....	10
Section2 The Obligation of Safety Guarantee for Colleges and Universities in Our Country .....	11
<b>Chapter 2 The Gist of the Obligation of Safety Guarantee for</b>	

	<b>Colleges and Universities.....</b>	<b>13</b>
<b>Subchapter1</b>	<b>The Contract Theory .....</b>	<b>13</b>
Section1	The Main Content of The Contract Theory.....	13
Section2	The Comments on The Contract Theory .....	13
<b>Subchapter2</b>	<b>In Loco parentis Theory .....</b>	<b>14</b>
Section1	The Main Content of In Loco parentis Theory .....	14
Section2	The Comments on In Loco parentis Theory .....	14
<b>Subchapter3</b>	<b>The Landlord-invitee Theory and the Landlord-tenant Theory .15</b>	
Section1	The Main Content of The Landlord-invitee Theory and the Landlord-tenant Theory .....	15
Section2	The Comments on The Landlord-invitee Theory and the Landlord-tenant Theory .....	15
<b>Subchapter4</b>	<b>The Foreseeability Theory.....</b>	<b>16</b>
Section1	The Main Content of The Foreseeability Theory .....	16
Section2	The Comments on The Foreseeability Theory.....	16
<b>Subchapter5</b>	<b>The Requirements of Economical Reason .....</b>	<b>17</b>
<b>Chapter3</b>	<b>Two Common Mistakes of Colleges and Universities’ Violation of Its Safety Guarantee Obligation.....</b>	<b>18</b>
<b>Subchapter1</b>	<b>Students’ Suicide Caused by Colleges and Universities’ Violation of Its Safety Guarantee Obligation.....</b>	<b>18</b>
Section1	Current Situation of Students’ Suicide .....	18
Section2	Colleges and Universities Have the Obligation of Safety Guarantee to Prevent Suicide .....	20
<b>Subchapter2</b>	<b>Hazardous Article and Circumstance Caused by Colleges and Universities’ Violation of its Safety Guarantee Obligation Infringes the Rights and Interests of Students.....</b>	<b>21</b>
Section1	Typical Cases of Students’ Personal and Property Damages Caused	

	by the Hazardous Circumstance of Colleges and Universities .....	21
Section2	The Obligation of Safety Guarantee for Colleges and Universities ..	22
<b>Chapter4</b>	<b>The Principle of Liability and the Structure Factors of Liability of Colleges and Universities' Violation of its Safety Guarantee Obligation.....</b>	<b>23</b>
<b>Subchapter1</b>	<b>The Principle of Liability of Colleges and Universities' Violation of its Safety Guarantee Obligation.....</b>	<b>23</b>
Section1	The Principle of Liability for Fault.....	23
Section2	The Reasons for The Principle of Liability for Fault .....	23
<b>Subchapter2</b>	<b>The Structure Factors of Liability of Colleges and Universities' Violation of its Safety Guarantee Obligation .....</b>	<b>24</b>
Section1	Colleges and Universities Has Violated its Safety Guarantee Obligation .....	25
Section2	Students Have Suffered Personal and Property Damages .....	25
Section3	There is Causation Between the Behavior of Colleges and Universities' Violation of its Safety Guarantee Obligation and the Students' Damage Results .....	26
Section4	Colleges and Universities Has Made Mistakes.....	26
<b>Conclusion</b> .....		<b>28</b>
<b>Bibliography</b> .....		<b>29</b>
<b>Acknowledgements</b> .....		<b>31</b>

厦门大学博硕士学位论文摘要库

## 引言

安全的生活环境是人们最基本的需求。很长一段时间，安全价值一直被人们忽略，并在法律规范中处于非主流的地位。随着科技的进步，社会发展进入一个新的时期，给人们生活带来诸多便利的同时，也使社会生活的危险性大大增加。为顺应时代的变化，各国的法律建设自然也要做出相应的调整。针对现实生活中危险活动增多的状况以及安全保护的缺乏，各国对人身安全保护的立法均有所加强。对安全保障义务理论的研究，正是人类为实现安全这一价值目标的不懈努力在现代侵权行为法立法中的具体体现，其作为现代法律因应时代发展要求的产物，开始登上大陆法系国家民事立法的舞台。从德国司法实务界创设一般安全注意义务以来，安全保障义务在理论界和实务界都取得了较大的发展，在现实生活中对于保障人们的人身和财产安全正发挥着越来越重要的作用。

近些年我国高等教育规模不断扩大，教育部官方网站 2010 年 12 月 30 日公布的有关数据显示，截止到 2009 年底我国高等教育普通本科、专科生在校总人数 21446570 人，硕士研究生 1158623 人，博士研究生 246319 人。<sup>①</sup>伴随这一状况，大学生在高校内遭受各类侵害的情况也频频发生，大学生在高校校内自杀事件更是时常见诸报端。大学生这一特殊群体肩负着祖国发展的重任，保护大学生安全地成长成才关乎国家的前途命运，所以对大学生的人身安全保障至关重要。那么高校在大学生成长过程中应当扮演什么角色呢？高校是否负有保障在校大学生安全的义务呢？本文针对这一问题，尽量全面地论述高等院校这一主体的安全保障义务的有关问题。深入细致地研究高校安全保障义务制度，不仅为大学生的安全成长提供有力条件，而且对于完善我国侵权行为法理论，从而为司法实践提供理论支撑有着重要的理论意义。随着这一理论的不断发展与完善，将使人民法院在审

---

<sup>①</sup>2009 年教育统计数据

[EB/OL]. <http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/s4960/index.html> , 2010-12-30.

判有关高校安全保障义务的案件时更加理性、科学，而更多的科学合理的有关高校安全保障义务案件的判决也会在客观上促进高校在安全保障方面加强管理，以更人性化的服务来管理，真正体现以人为本的理念，从而保障大学生的人身和财产权益。广大的大学生也会从有关的理论研究和司法判决中了解到更多的关于安全保障义务方面的法律知识，从而提高自身的法律意识，在自己的人身和财产权益受到损害时，以法律为武器维护自身的合法权益。因此，研究高校安全保障义务也是有着极为重要的应用价值与实践意义的。



Degree papers are in the "[Xiamen University Electronic Theses and Dissertations Database](#)". Full texts are available in the following ways:

1. If your library is a CALIS member libraries, please log on <http://etd.calis.edu.cn/> and submit requests online, or consult the interlibrary loan department in your library.
2. For users of non-CALIS member libraries, please mail to [etd@xmu.edu.cn](mailto:etd@xmu.edu.cn) for delivery details.

厦门大学博硕士论文摘要库