

reasonable inference from undisputed facts," and the non-movant's claim is completely without merit. See *Cutter v. Town of Farmington*, 126 N.H. 836, 839-40, 498 A.2d 316, 319 (1985).

The elements of negligence are a breach of a duty of care by the defendant, which proximately causes the plaintiff's injury. See *White v. Schnoebelen*, 91 N.H. 273, 274-75, 18 A.2d 185, 186-87 (1941). We first consider whether the defendant breached a duty of care owed to the plaintiffs. The test of due care is what reasonable [128 N.H. 331] prudence would require under similar circumstances. *Fitzpatrick v. Company*, 101 N.H. 35, 37, 131 A.2d 634, 637 (1957).

The Town of Kingston's unwritten policy did not require detention of teenagers found illegally transporting alcohol, nor did it require the police to notify their parents. The town therefore contends that it is not liable for reasonable errors made in the exercise of police officers' discretion in determining whether to detain the teenagers.

RSA 180:2 provides that

"[w]hen any ... duly appointed police officer ... shall discover any person in the act of transporting intoxicating liquor in violation of this chapter or any other law of this state, ... it shall be his duty to seize all intoxicating liquors found therein being transported contrary to law.... Whenever intoxicating liquors being illegally transported shall be seized by an officer he ... shall arrest any person or persons in charge thereof."

(Emphasis added.) The use of the word "shall" in a statute generally indicates that the provision is mandatory. See *Dover Professional Fire Officers Assoc. v. City of Dover*, 124 N.H. 165, 169, 470 A.2d 866, 869 (1983). Good reasons justify the application of this statute to cases where teenagers are discovered illegally transporting alcohol. The dangers linked to the combination of minors, alcohol, and driving are well-documented. See generally Comment, *The Politics and Consequences of the New Drinking Age Law*, 13 Fla.St.U.L.Rev. 847 (1985). We

therefore hold that RSA 180:2 requires police officers to arrest teenagers discovered illegally transporting alcohol. The failure of the Kingston police officers to do so was a breach of the statutory duty of care.

Moreover, we believe that, regardless of any statutory duty, action in accordance with the town's policy was a violation of the common law duty of due care. Police officers are obligated to protect the general public, and reasonable prudence dictates that teenagers illegally transporting alcohol be detained. The foundation of a cause of action for negligence is the doctrine of foreseeability. "Duty and foreseeability are inextricably bound together." *Corso v. Merrill*, 119 N.H. 647, 651, 406 A.2d 300, 303 (1979). Teenagers who are released after illegally drinking and driving foreseeably present a danger to the public and to

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themselves, and due care mandates that they be detained and their parents notified.

The defendant contends that the plaintiff, Denise Gerry, failed to prove that her injury was proximately caused by the [128 N.H. 332] defendant's conduct. Violation of RSA 180:2 constitutes negligence only if the violation caused the injury by creating a danger that the statute was intended to prevent. See *Fontaine v. Charas*, 87 N.H. 424, 426, 181 A. 417, 418 (1935). The requirement of proximate cause "confine[s] the liability of a negligent actor to those harmful consequences which result from the operation of the risk, or of a risk, the foreseeability of which rendered the defendant's conduct negligent." *Marshall v. Nugent*, 222 F.2d 604, 610 (1st Cir.1955). The defendant's conduct can be a proximate cause of the plaintiff's injury if it is "a substantial factor in bringing about the harm." *Maxfield v. Maxfield*, 102 N.H. 101, 105, 151 A.2d 226, 230 (1959).

The defendant asserts that superseding acts broke the chain connecting any negligence of the defendant with the plaintiff's injuries. In order to