

Universities Have a Special Relationship With Their Students and a Duty to Protect Them From Foreseeable Violence During Curricular Activities.

Damon Thompson was a transfer student at UCLA. After enrolling, Thompson began to experience problems with other students in both classroom and residence hall settings. On multiple occasions, Thompson complained to professors, a dean, and a teaching assistant about the alleged harassing behavior of other students and professors during class and in his residence hall.

UCLA urged Thompson to seek help at the university's Counseling and Psychological Services (CAPS), but Thompson's complaints of hearing voices and threats from other students only increased. After a discussion with his residence hall director, campus police escorted Thompson to the emergency room for a psychiatric evaluation where doctors diagnosed Thompson with possible schizophrenia and major depressive disorder. Thompson agreed to take medication and begin outpatient treatment at CAPS. UCLA was informed about the incident and Thompson's mental evaluation.

However, Thompson discontinued the medication and continued to report hearing voices and being harassed by other students. At a psychiatric session, he admitted to thinking about harming others, although he had no identified victim or plan. CAPS staff agreed that Thompson did not meet the criteria for an involuntary psychiatric hold, and Thompson later withdrew from outpatient treatment.

A few months later in June 2009, Thompson accused a dormitory resident of making too much noise and pushed the resident. UCLA expelled Thompson from university housing and ordered him to return to CAPS in the fall quarter.

Throughout the summer session and fall quarter, Thompson continued to experience auditory hallucinations in the classroom and again agreed to start treatment at CAPS. In one incident in a chemistry lab, Thompson accused a specific unnamed student as one of his alleged tormentors. UCLA decided to investigate whether Thompson was having similar difficulties in other classes. The same day, Thompson missed a scheduled session at CAPS.

Two days after the incident in the chemistry lab, Thompson, without warning or provocation, stabbed fellow student Katherine Rosen in the chest and neck with a kitchen knife. Rosen survived the life-threatening injuries. Thompson admitted to campus police that he stabbed someone because the other students had been teasing him. He pleaded not guilty by reason of insanity to a charge of attempted murder, and after admission to a state hospital, was diagnosed with paranoid schizophrenia.

Rosen sued Thompson, the Regents of the University of California and several UCLA employees for negligence. Rosen alleged UCLA had a special relationship with her as an enrolled student, which entailed a duty "to take reasonable protective measures to ensure her safety against violent attacks and otherwise protect her from reasonable foreseeable criminal conduct, to warn her as to

such reasonable foreseeable criminal conduct on its campus and in its buildings, and/or to control the reasonably foreseeable wrongful acts of third parties/other students.” She alleged UCLA breached this duty because, although aware of Thompson’s “dangerous propensities,” it failed to warn or protect her or to control Thompson’s foreseeably violent conduct.

UCLA argued the case should not proceed because: (1) colleges have no duty to protect their adult students from criminal acts; (2) if a duty does exist, UCLA did not breach it in this case; and (3) UCLA and one employee were immune from liability under certain Government Code provisions. Rosen argued UCLA owed her a duty of care because colleges have a special relationship with students in the classroom, based on their supervisory duties and the students’ status as “business invitees”—in this case, a person invited into the classroom to receive an education. Rosen also claimed UCLA assumed a duty of care by undertaking to provide campus-wide security.

The trial court ruled against UCLA’s and concluded a duty could exist under each of the grounds Rosen identified, there was a question about whether UCLA breached that duty, and the immunity statutes did not apply. UCLA appealed the ruling, and a divided panel of the Court of Appeal granted the appeal.

The majority held that UCLA owed no duty to protect Rosen based on her status as a student or business invitee or based on the failure of its campus-wide security program. The court also rejected Rosen’s new theories of duty based on contract and labor laws regarding violence in the workplace. Rosen sought review in the California Supreme Court, which granted review of the decision.

In general, people have a duty to act with reasonable care under the circumstances. A duty to control, warn, or protect may be based on a defendant’s relationship with either the person whose conduct needs to be controlled or with the foreseeable victim of that conduct. Specifically, a duty to control may arise if a party has a special relationship with the foreseeably dangerous person that entails an ability to control that person’s conduct. One example of this type of relationship is the parent-child relationship. Similarly, a duty to warn or protect may be found if a party has a special relationship with the potential victim that gives the victim a right to expect protection. One example of this type of relationship is innkeepers and their guests.

Prior to this case, the California Supreme Court held that high schools have a duty to protect students from assault on campus, but it had not extended that duty to institutions of higher education in the same context. In this case, the Court had to decide whether postsecondary institutions have a special relationship with students while they are engaged in activities that are part of the institution’s curriculum or closely related to its delivery of educational services. The Court considered the level of dependence that college students have on a college and the level of control the college has over its students and campus. Ultimately, the Court concluded the college-student relationship fits within the paradigm of a special relationship but only in the context of college-sponsored activities over which the college has some measure of control. The duty extends to activities that are tied to the university’s curriculum but not to student behavior over which the university has no significant degree of control. UCLA did not owe a duty to the public at large but only to enrolled students who are at foreseeable risk of being harmed in a violent attack while participating in curricular activities at the UCLA. Moreover, universities are

not charged with a broad duty to prevent violence against their students. Such a duty could be impossible to discharge in many circumstances. Rather, UCLA's duty is to take reasonable steps to protect students when it becomes aware of a foreseeable threat to their safety. The reasonableness of a university's actions in response to a potential threat is a question of breach.

Whether a university was, or should have been, on notice that a particular student posed a foreseeable risk of violence is a case-specific question, to be examined in light of all the surrounding circumstances. Such case-specific foreseeability questions are relevant in determining the applicable standard of care or breach in a particular case, but they do not determine that a duty exists.

In this case, the incident here occurred in a chemistry laboratory while class was in session, which was a place where a student could reasonably expect their university to provide some measure of safety. UCLA argued that imposing a duty of care in this situation would discourage colleges from offering comprehensive mental health and crisis management services and incentivize post-secondary institutions to expel anyone who might pose a remote threat to others. However, the Court stated that recognizing the duty could encourage postsecondary institutions to take steps to avoid violent episodes, which serves the policy of preventing future harm. Thus, UCLA did owe a duty to protect Rosen.

Ultimately, the Court reversed the Court of Appeal's decision with regard to the duty UCLA owed Rosen, but it sent the case back to the Court of Appeal to decide the remaining issues, including a determination of whether UCLA reasonably could have done more to prevent the assault.

Regents of the University of California v. Superior Court (Mar. 22, 2018, No. S230568)
__Cal.4th __ [2018 WL 1415703].