Appellate Reports

Regents of the Univ. of California v. Superior Court (*Rosen*) — Holding that universities have a special relationship with their students, and therefore owe them a limited duty of care to protect them during "curricular" activities

By Jeffrey I Ehrlich

***Regents of the Univ. of California v. Superior Court* (*Rosen*)**

(2018) __ Cal.5th __ (Cal. Supreme)

Who needs to know about this case? Lawyers handling negligence cases against a college or university on behalf of an injured student; lawyers who want to have a better understanding about principles of negligence law and duty.

Why it's important: The California Supreme Court holds that, given the unique nature of the college environment, universities have a special relationship with their students and a corresponding duty to protect them from foreseeable violence during "curricular activities."

Synopsis: Damon Thompson transferred to UCLA in the fall of 2008. He soon began experiencing problems with other students in both classroom and residence hall settings. He repeatedly complained to university officials that he was the victim of teasing, verbal abuse, and sexual harassment by other students. He reported hearing voices. He was enrolled in the university's Counseling and Psychological Services (CAPS) program, and was treated by psychologists and psychiatrists. He was diagnosed with schizophrenia and major depressive disorder. He was not compliant with his medications. He normally denied any intent to harm himself or others. On one occasion he told a resident director in his dormitory that there were "voices coming through the walls calling him an idiot." He also said that he heard a clicking noise above his room that sounded like a gun, and he believed the other residents were planning to shoot him. Thompson said that he had telephoned his father and was advised to "hurt the other residents." While admitting he had "thought about it," Thompson said he decided not to hurt anyone.

Thompson continued to experience auditory hallucinations in the classroom. During the summer, he complained to two faculty members about insults and harassment in his chemistry laboratory. After fall quarter started, Thompson emailed professor Alfred Bacher that the disruptive behavior of other students was interfering with his experiments. The next day, September 30, Thompson told CAPS psychologist Tanya Brown he still "occasionally" heard "voices of other students having 'malice' toward him and making critical and racist comments." Nevertheless, he denied an intent to harm anyone, including those criticizing him. Brown noted that Thompson displayed a guarded attitude, slowed speech, delusional thought processes, and impaired insight. CAPS psychiatrist Charles McDaniel met with Thompson the same day and made similar observations. Due to Thompson's behavior, McDaniel was unsure whether he was reporting his symptoms accurately. Thompson agreed to start treatment at the university's behavioral health clinic.

On October 6th, teaching assistant Adam Goetz emailed Professor Bacher describing "another incident" with Thompson in that day's chemistry lab. Shortly after the professor left the room, Thompson accused another student of calling him stupid. He insisted on learning the student's name. After Goetz gave him the name, Thompson "calmed down" and "seemed fine." But Goetz remained worried that Thompson's behavior was becoming a weekly "routine." Goetz later testified that Thompson frequently identified Katherine Rosen, who worked "right next to" Thompson in the lab, as one of the students calling him stupid.

The following day, another teaching assistant told Professor Bacher that Thompson had come into his chemistry lab from a different section and accused students of verbally harassing him. Although Thompson did not know the students' names, he did identify a specific student, other than Rosen, as one of his tormentors. The teaching assistant saw no harassment and was skeptical of Thompson's claims.

Around noon on October 8th, Thompson was doing classwork in Professor Bacher's chemistry laboratory. Suddenly, without warning or provocation, he stabbed fellow student Katherine Rosen in the chest and neck with a kitchen knife. Rosen had been kneeling down, placing items in her lab drawer, when Thompson attacked her from behind. She was taken to the hospital with life-threatening injuries but ultimately survived. When campus police arrived, Thompson admitted he had stabbed someone and explained that the other students had been teasing him. Thompson ultimately pleaded not guilty by reason of insanity to a charge of attempted murder. (Pen. Code, §§ 187, subd. (a), 664, 1026.) He was admitted to Patton State Hospital and diagnosed with paranoid schizophrenia.

Rosen sued Thompson, the Regents of the University of California, and several UCLA employees, including Alfred Bacher, Cary Porter, Robert Naples, and CAPS psychologist Nicole Green. The complaint alleged a single cause of action

against the UCLA defendants 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 moved for summary judgment on three alternative grounds: (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 Green were immune from liability under certain Government Code provisions. In opposing the motion, 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. Rosen also claimed UCLA assumed a duty of care by undertaking to provide campus-wide security.

The trial court denied the motion. The court concluded a duty could exist under each of the grounds Rosen identified, triable issues of fact remained as to breach of duty, and the immunity statutes did not apply. UCLA challenged this order in a petition for writ of mandate. A divided panel of the Court of Appeal granted the petition. The Supreme Court granted review and reversed the Court of Appeal, holding that the trial court had correctly denied the motion.

Because UCLA is a public entity, its exposure to tort liability is nominally defined by statute. (Gov. Code, § 815, subd. (a).) But the Tort Claims Act provides that public employees are liable for their acts and omissions "to the same extent as a private person" (Gov. Code, § 820, subd. (a)), and public entity employers are vicariously liable for employees' negligent acts within the scope of their employment to the same extent as private employers (Gov. Code, § 815.2, subd. (a)). Because it is undisputed that all university employees here were acting within the scope of their employment, UCLA's potential liability therefore "turns on ordinary and general principles of tort law." (*Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 716.)

In general, each person has a duty to act with reasonable care under the circumstances. (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 771 (*Cabral*); see Civ. Code, § 1714, subd. (a).) However, "one owes no duty to control the conduct of another, nor to warn those endangered by such conduct." (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203 (*Davidson*).) "A person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another unless there is some relationship between them which gives rise to a duty to act." (*Williams v. State of California* (1983) 34 Cal.3d 18, 23; see Cabral, at p. 771.)

A duty to control, warn, or protect may be based on the 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 the defendant has a special relationship with the foreseeably dangerous person that entails an ability to control that person's conduct. (Rest.3d Torts, Liability for Physical and Emotional Harm, § 41.) The parent-child relationship is an example of a special relationship giving rise to a duty to control. Similarly, a duty to warn or protect may be found if the defendant has a special relationship with the potential victim that gives the victim a right to expect protection. The relationships between common carriers and their passengers, or innkeepers and their guests, are classic examples of this type of special relationship. (See Rest.3d Torts, Liability for Physical and Emotional Harm, § 40, subd. (b)(1)-(2).)

Rosen's complaint alleges UCLA had separate duties to protect her *and* to "control the reasonably foreseeable wrongful acts of third parties/other students." Here, we have focused on the university's duty to protect students from foreseeable violence. Having concluded UCLA had a duty to protect Rosen under the circumstances alleged, we need not decide whether the school had a separate duty to control Thompson's behavior to prevent the harm.

The Restatement Third of Torts identifies several special relationships that may support a duty to protect against foreseeable risks. In addition to the common carrier and innkeeper relationships previously mentioned, the list includes a business or landowner with invited guests, a landlord with tenants, a guard with those in custody, an employer with its employees, and "a school with its students." (Rest.3d Torts, Liability for Physical and Emotional Harm, § 40, subd. (b).) The Restatement does not exclude colleges from the school-student special relationship. However, the drafters observe that reasonable care varies in different school environments, with substantially different supervision being appropriate in elementary schools as opposed to colleges. (*Id*., § 40, com. *l*, p. 45.) State courts have reached different conclusions about whether colleges owe a special relationship-based duty to their students. (*Id*., § 40, com. *l*, reporter's notes.)

Relationships that have been recognized as "special" share a few common features. Generally, the relationship has an aspect of dependency in which one party relies to some degree on the other for protection. The corollary of dependence in a special relationship is control.

Whereas one party is dependent, the other has superior control over the means of protection. A typical setting for the recognition of a special relationship is where 'the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has some control

over the plaintiff's welfare. Common examples include jailer and prisoner, and common carriers and their passengers.

Special relationships also have defined boundaries. They create a duty of care owed to a limited community, not the public at large. Because a special relationship is limited to specific individuals, the defendant's duty is less burdensome and more justifiable than a broad-ranging duty would be.

Although comparisons can be made, the college environment is unlike any other. Colleges provide academic courses in exchange for a fee, but a college is far more to its students than a business. Residential colleges provide living spaces, but they are more than mere landlords. Along with educational services, colleges provide students social, athletic, and cultural opportunities. Regardless of the campus layout, colleges provide a discrete *community* for their students. For many students, college is the first time they have lived away from home. Although college students may no longer be minors under the law, they may still be learning how to navigate the world as adults. They are dependent on their college communities to provide structure, guidance, and a safe learning environment.

Colleges, in turn, have superior control over the environment and the ability to protect students. Colleges impose a variety of rules and restrictions, both in the classroom and across campus, to maintain a safe and orderly environment. They often employ resident advisers, mental health counselors, and campus police. They can monitor and discipline students when necessary. While its primary function is to foster intellectual development through an academic curriculum, the institution is involved in all aspects of student life. Through its providing of food, housing, security, and a range of extracurricular activities the modern university provides a setting in which every aspect of student life is, to some degree, university guided.

The college-student relationship thus fits within the paradigm of a special relationship. Students are comparatively vulnerable and dependent on their colleges for a safe environment. Colleges have a superior ability to provide that safety with respect to activities they sponsor or facilities they control. Moreover, this relationship is bounded by the student's enrollment status. Colleges do not have a special relationship with the world at large, but only with their enrolled students. The population is limited, as is the relationship's duration.

Of course, many aspects of a modern college student's life are, quite properly, beyond the institution's control. Colleges generally have little say in how students behave off campus, or in their social activities unrelated to school. It would be unrealistic for students to rely on their college for protection in these settings, and the college would often be unable to provide it. This is another appropriate boundary of the college-student relationship: Colleges are in a special relationship with their enrolled students only in the context of school-sponsored activities over which the college has some measure of control.

The incident here occurred in a chemistry laboratory while class was in session. Education is at the core of a college's mission, and the classroom is the quintessential setting for curricular activities. Perhaps more than any other place on campus, colleges can be expected to retain a measure of control over the classroom environment.

Thus, while the Court concluded that UCLA did owe a duty to protect Rosen, it remanded for the Court of Appeal to decide whether triable issues of material fact remain on the questions of breach and immunity.


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