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PERSPECTIVE

Ruling clarifies legal duty to protect others from harm

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Is there a legal duty to protect others from harm caused entirely by third parties? “It depends,” goes the standard refrain. And while the characteristically fact-dependent nature of negligence law persists after the California Supreme Court’s recent holding in *Brown v. USA Taekwondo*, 2021 DJDAR 3037 (Cal., Apr. 1, 2021), the unanimous decision importantly clarifies what tests courts must apply to determine whether a legal duty exists.

The case originated under tragic — and, to borrow the words of concurring Justice Mariano-Florentino Cuéllar, “tragically all-too common” — facts. Three women taekwondo athletes sued over sexual abuse they suffered as minors by former Olympics taekwondo coach Marc Gitelman, who ultimately was criminally convicted. While the three prevailed against Gitelman in a \$60 million judgment, the trial court dismissed claims against *USA Taekwondo* (USAT), the governing body for the Olympic sport, and the United States Olympic & Paralympic Committee (USOPC). The claims against those organizations turned on whether each had a duty to protect the plaintiffs from Gitelman. An appellate court held that USAT did have such a duty and therefore could be liable if a factfinder found it to have breached that duty, but that the USOPC’s oversight role was too attenuated to impose liability.

Over the years, the California Supreme Court has made clear that two inquiries bear on whether a duty to protect exists. The special relationship inquiry asks whether a defendant had a special relationship with either the plaintiff or the third-party

tortfeasor that would justify imposing a duty to prevent harm. This special relationship depends on control over the tortfeasor or a reasonable expectation of protection from the plaintiff. The second doctrine, the so-called *Rowland* factors, originates from an eponymous case where the Supreme Court analyzed a variety of factors to determine whether public policy supported limiting a duty of care.

But lower courts have applied these tests inconsistently. Some considered them two separate routes to duty, while others structured the inquiry as a two-step test. Still others noted the public-policy rationales common

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to each test and conflated the two. Confusion over the proper structure of the duty inquiry has serious ramifications; while many of the elements in a negligence action involve questions of fact, the existence of a duty of care is essentially a threshold question of law for the judge. The wrong analysis might result in an unnecessary trial or the premature dismissal of a case that should have gone to the jury.

In the context of a growing awareness of sexual abuse in amateur sports, clarity regarding the allocation of responsibility for devastating harm among the many entities that govern, sponsor, or play any role in athletics is important. Organizations that offer training, guidelines and education in the realm of sports have faced uncertainty about whether

doing so could expose them to liability, and confusion about the exact nature of the third-party duty inquiry has not helped.

In *USA Taekwondo*, the California Supreme Court clarified that the two-step approach is the right one. Both the special relationship test and the *Rowland* factors must be satisfied before imposing duty to protect a plaintiff from third-party harm. The special relationship test can be satisfied by either of two types of relationships: a relationship between defendant and victim that “gives the victim the right to expect protection,” or a relationship between the defendant and the *dangerous third party* that

as a coach and had the authority to impose discipline. By contrast, the USOPC, which oversees and issues guidance for dozens of separate governing bodies, was not in a position to control Gitelman’s actions, and therefore was not in a special relationship with Gitelman.

But the special relationship test is only half the equation. For claims and defendants adjudged to satisfy the special relationship test, the Supreme Court explained that courts must separately determine whether policy considerations enshrined in the *Rowland* factors “justify limiting” the duty of protection that results from the special relationship. By clarifying that the *Rowland* public policy factors apply as a second step, the court made clear that these considerations are important in establishing the contours of third-party liability.

A particularly interesting application of *Rowland*’s attention to social consequences is *Castaneda v. Olsher*, 41 Cal. 4th 1205 (2007), which the *USA Taekwondo* court cited in elaborating the two-part test. In *Castaneda*, even though a landlord was in a special relationship to his tenants, he had no duty to avoid renting units to gang members, because to impose that duty would invite “arbitrary discrimination on the basis of race, ethnicity, family composition, dress and appearance, reputation,” and other factors. *Castaneda* represents a clear-cut case of negative social outcomes. But courts may wrestle with challenging issues in cases where the public policy ramifications are less clear, such as the facts in *Barenborg v. Sigma Alpha Epsilon Fraternity*, 33 Cal. App. 5th 70 (2019), where a national fraternity’s liability for injuries at a local chapter’s party was at issue.

While the *USA Taekwondo* court did not reach the *Rowland* factors

in the context of the USOPC (because it found no special relationship), an examination into the social consequences of imposing a duty might include the problem of disincentivizing the issuance of guidance — an important function of the USPOC.

USA Taekwondo will have meaningful ramifications for courts, litigants and the general public; in California, the care each person and entity owes to another has been made somewhat clearer by the decision. But

the consequences for organizations like the USOPC may be the most direct and immediate. Organizations that set high-level rules for their membership should be less concerned that merely issuing guidance and best practices — including policies meant to curb abuse — will open them up to liability for the actions of third parties. Some landmark decisions reshape the legal landscape; *USA Taekwondo* plants a needed signpost in famously uneven terrain. ■

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