

# A Special Relationship Can Lead to Vicarious Liability

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A recent decision by the Supreme Court of California brings home the importance of exercising reasonable care in the supervision, hiring, and retention of employees, especially when a special relationship exists between the organization and the individuals it serves.

Public schools are perfect examples of settings where this special relationship exists, i.e. the relationship between the school and its students. Hospitals and rehabilitation facilities also appear to have a special relationship with those they serve. But exactly how far the concept of a special relationship extends is difficult to say and will likely be determined on a case by case basis, subject to an intensive fact analysis.

Does a special relationship exist between a corporation, its employees, its customers, or even members of the public in general, who may be injured by actions of company employees? Can an injured employee, customer, or member of the public state a valid legal claim by alleging that the damage they suffered was caused by the company' negligence in the supervision, hiring, or retention of the employee responsible for such damage?

A recent California Supreme Court decision involved a high school student who sued the school for negligent supervision of a guidance counselor who he alleged sexually molested him, arguing that the school knew, or should have known of the guidance counselor's "propensities", and thereafter "failed to use reasonable care in investigating her."

The court noted in its decision that "school districts and their employees have never been considered insurers of the physical safety of students", but nonetheless reversed the lower courts. In C.A. v. William S. Hart Union High School [53Cal. 4th 861 (2012)], the Court held that a public school district may be vicariously liable for the negligence of administrators or supervisors in hiring and retaining a school employee who molests a student.

It remains to be seen in the *Hart* case whether the student can prove his allegations at trial, but the potential for lawsuits based on vicarious liability now exists on a broader scale when a special relationship can be shown.

As such, the *Hart* decision has important implications for insurance policies covering employment practices, and means that all California businesses, as well as public entities, must be especially diligent in their hiring practices and supervision, using effective background checks, especially where there is a "special relationship" between the business or public entity and those they serve.

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