[2026] JMSC Civ. 136

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2017 HCV 03852

BETWEEN	**DWAYNE MILFORD**	**CLAIMANT**
AND	**THE UNIVERSITY OF THE WEST INDIES**	**DEFENDANT**

IN OPEN COURT

Mr. Nigel Jones and Ms. Kashina Moore instructed by Nigel Jones & Co. for the Claimant

Mr. Christopher Kelman and Ms. Meghan Falconer instructed by Myers, Fletcher & Gordon for the Defendant

Heard: June 22 and 23, 2026 and November 6, 2026

Tort – Occupier's Liability Act – Negligence – Whether the Defendant owed a duty of care to the Claimant – Whether the Defendant breached that duty – Did the Claimant suffer injuries because of the breach of duty – Whether the Claimant is entitled to Damages

CARR, J

Introduction

[1] The claim arises from an unfortunate incident that occurred at the University of the West Indies (**the University**). Mr. Dwayne Milford, a student at the University, was studying at a gazebo on the Mona Campus on June 29, 2015, when he was a victim of a crime. He was robbed of his laptop and stabbed by one of the assailants.

The Claim

[2] Mr. Milford has sought to recover damages for breach of statutory duty and/or negligence on the basis that the University did not provide adequate security for its students.

Issues

[3] The issues for determination are as follows:

1. Did the University owe a duty of care to Mr. Milford, either by virtue of statute or at common law in negligence. If so, did they breach that duty thereby resulting in injury, loss or damage to Mr. Milford.

2. Is Mr. Milford entitled to damages.

Analysis and Discussion

Whether the University owed Mr. Milford a duty of care

[4] Mr. Kelman in his submissions asked the Court to note that although the claim form alluded to a breach of statutory duty, there was no specific statute that was referenced there or in the particulars of claim.

[5] It is the duty of the claimant to plead its case in such a way that the defendant can ascertain the case which it is to meet. In the Court of Appeal decision of **Pumps & Irrigation Limited v. Jamaica Public Service Company Limited and Winston Pusey**[1], the claimant alleged breach of statutory duty but did not adequately particularise the statutory breach in his pleadings. The Court at pages 22-23 of the judgement observed that the general allegation that the defendants had failed to

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[1] SCCA No. 62/1993

provide a safe place of work was inadequate to set out a breach of statutory duty. The Court further emphasised that negligence and breach of statutory duty are distinct causes of action and should be pleaded separately and specifically. The circumstances surrounding the trial of that claim resulted in confusion between the two causes of action.

[6] In the present claim even though the statute was not pleaded Counsel proceeded to discuss a breach of the Occupier's Liability Act (**the Act**) in their submissions. Neither Mr. Milford nor the University is prejudiced by the court's consideration of this issue in these circumstances.

[7] In that regard I have considered Section 3 of the Act which states that:

> *(1) An occupier of premises owes the same duty (in this Act referred to as the "common duty of care") to all his visitors, except in so far as he is free to and does extend, restrict, modify, or exclude his duty to any visitor by agreement or otherwise.*
>
> *(2) The common duty of care is the duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.*

[8] There is no dispute that Mr. Milford was a lawful visitor to the University on the date of the incident. There is also no dispute that the University is the occupier of the Mona Campus. As a lawful visitor to the University Mr. Milford was owed a duty of care by virtue of the Act.

[9] Additionally, he is also owed a duty of care under the common law tort of negligence as a relationship existed between the University and Mr. Milford since he was a registered student of the institution.

[10] It is a well-established principle of law that there is no distinction between the duty imposed under the common law tort of negligence and that under the Act. In the

seminal case of **Donoghue v. Stevenson**[2], the dicta in the case of **Heaven v. Pender**[3] were used to describe the common duty of care as follows:

> *…whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger …*

[11] In this case Mr. Milford was a registered student at the University and would have foreseeably been affected by any decisions or lack thereof on the part of that organisation.

[12] The concern raised by the University is that the Court should not find that they had a duty to prevent a criminal act as this could not be reasonably foreseen. Mr. Kelman submitted, relying on the cases **Home Office v. Dorset Yacht Co Ltd**[4] and **Leslie Powell v. Guardsman Ltd**[5], that there is generally no duty to prevent the criminal acts of third parties. Such a duty may only arise where a special relationship or contractual obligation gives rise to a responsibility to protect against such acts, provided that the risk of the harm suffered was sufficiently foreseeable. He further relied on **Gassan Azan v. Bank of Nova Scotia Jamaica Limited et al**[6] for the principle that the mere foreseeability of criminal conduct by third parties, without more, is insufficient to impose liability on an occupier.

[13] Mr. Jones asked the court to consider the decision in **Modbury Triangle Shopping Centre Pty Ltd v. Anzil**[7] and argued that a special relationship existed between the Claimant as a student and the Defendant institution. He contended

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[2] [1932] AC 562
[3] (1883) 11 QBD 503
[4] [1970] 2 All ER
[5] Suit No. C.L. P 049 of 1999
[6] [2015] JMSC Civ. 66
[7] [2000] HCA 61; 205 CLR 254; 176 ALR 411; 75 ALJR 164 (23 November 2000)

that the University's representations concerning the provision of a safe and secure campus gave rise to a duty of care.

[14] The submissions of Counsel are noted, however the gravamen of the case on behalf of Mr. Milford is that the University failed to provide adequate security for its students. Essentially then, despite the submissions, the case rests on that sole issue. The particulars of negligence listed in the particulars of claim substantiate this fact. There is therefore no need to determine the legal issues raised relative to the responsibility of the University regarding the actions of third parties.

[15] Mr. Jones in his cross-examination of the sole witness for the defence focused on the threats and security concerns that have permeated the University for several years. To this end an excel spreadsheet outlining reported incidents on the University's Mona campus from January 17, 2010, to April 26, 2014,[8] and April 27, 2014, to December 2, 2017[9] was admitted into evidence.

[16] Mr. Nesbeth accepted that there were incidents of crime reported on the campus, but he indicated that it was not widespread. It is my view that Mr. Nesbeth's assessment does not accord with the evidence as contained in Exhibits 16 parts 1 and 2. I find that it was reasonably foreseeable that there could be criminal activity on the Mona campus based on the reports provided. As such the University had a duty to ensure the safety of its students on campus, to include Mr. Milford, as it concerns criminal activity.

Did the University breach their duty of care

[17] To establish that the University breached its duty of care, Mr. Milford must prove that the University did not take such care as in all the circumstances of the case is reasonable to see that he was reasonably safe in using the premises for the

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[8] Exhibit 16 (part 1)
[9] Exhibit 16 (part 2)

purposes for which he was invited or permitted by them to be there. In **Rose Hall v. Robinson and J.P.S.**[10] it was held that this duty encompasses two main points. Firstly, the occupier is only liable for the dangerous physical condition of the premises, and secondly for dangers arising from things done or omitted to be done on the premises by himself or others for whose conduct he is under a common law liability.

[18] In setting out his particulars of negligence Mr. Milford asked the court to conclude that the University failed to do the following:

a. provide a safe environment for the Claimant as a lawful visitor to the property.

b. ensure that adequate security was in place on the University compound at night.

c. ensure that proper checks are in place to prevent criminals from entering the university campus.

d. provide adequate security to designated study areas on the campus.

e. regularly patrol area where students congregate.

f. implement proper safety procedures in relation to visitors to the university travelling on motor bikes.

g. take any or any reasonable care to prevent injury or damage to the Claimant.

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[10] (1984) JLR 76

h. Failing to take reasonable care for the safety of students on the compound against risk of danger.

[19] It is plain to see that the particulars of negligence have conflated the allegations of breach of statutory duty with that of negligence.

[20] In assessing the evidence of the witnesses (Mr. Milford, Ms. Oprah Coleman and Mr. Nesbeth), I will utilise the particulars as a guide, to illustrate the efforts made by the University and to determine if they were reasonable in the circumstances. I have grouped them together as they are somewhat interconnected.

Provide a safe environment as a lawful visitor to the property and to designated study areas on campus – ensure that adequate security is in place at night and regular patrols in areas where students congregate

[21] Mr. Milford and Ms. Coleman's witness statement stood as their evidence in chief and they were cross-examined.

[22] They both intimated that the gazebo was an area designated for studying and that the University was aware that students would use it for that purpose at night. In commenting on the evidence of Mr. Nesbeth, Mr. Milford admitted that the gazebo was, to his knowledge, secure and well lit.

[23] In cross-examination he agreed that at the time of the incident he had completed three years on the campus of the University and that he had a good idea of the areas on the campus that had security measures and those that did not. He accepted that the University provided designated areas for studying such as the main library which operates twenty-four hours. He agreed that the main library was better illuminated than the area that he was using that night and that it was better suited for studying than the gazebo.

[24] He said that a manned security post was within his line of sight. He could see it at the post office entrance, which he estimated was about one hundred metres away.

He disagreed with the suggestion that at that time of night and at that location there was no security guard within his line of sight.

[25] Prior to the incident while sitting under the gazebo he did not see any campus security personnel, however he recalled one campus police patrol passing fifteen minutes before the incident.

[26] Mr. Milford accepted that the University disseminated security advisories to students as set out in the witness statement of Mr. Nesbeth and that they were also advised to avoid remote or secluded areas. He agreed that students were sensitized about this at orientation.

[27] Mr. Nesbeth's witness statement stood as his evidence in chief, and he was cross-examined at length. He is the campus security manager responsible for the management of the security functions on the campus. He outlined that the University maintains a structured security system tailored to ensure the safety of all staff, students, and visitors to the campus. At the time of this incident the security team comprised of twenty officers at the Mona police post and two hundred security guards strategically stationed around the campus.

[28] The University has designated areas for students outside of the operational hours of the campus. Those areas such as the main library are equipped with surveillance cameras and are well lit. The faculties have a security presence until 10:00 pm and the main library 24 hours.

[29] Security advisories are disseminated periodically to staff and students, warning of potential security concerns, how they are being mitigated and asking people to be vigilant when traversing certain areas. Students are also provided with a security handbook detailing security measures implemented on campus and safety tips.

[30] It is fair to say based on the evidence that the University provided spaces that were secure and safe for students to study throughout the day and night. The deployment of security guards and the erection of security posts over a twenty-

four-hour period is also accepted. Mr. Milford's evidence confirmed that there was a patrol that passed shortly before the incident. There is no evidence that contradicts these factual findings. Nor is there any evidence to suggest that the arrangements made by the University are insufficient or inadequate.

[31] There is no allegation that the physical conditions of the University caused the incident neither can it be said that the University failed in its duty whether by things done or undone to provide a safe environment for all students to include Mr. Milford.

Ensure that proper checks are in place to prevent criminals from entering the university campus and implement proper safety procedures in relation to visitors to the university travelling on motor bikes.

[32] Mr. Milford relied on a letter from the Campus Registrar which was agreed and admitted as Exhibit 1. In that letter at paragraph 2 it was stated:

> *As a result of this incident we have re-visited and changed the protocols surrounding visitors to the Campus who travel on motor bikes. We believe that this will go a far way in preventing incidents of this nature in the future.*

[33] This tacit admission is the lynch pin of the case for Mr. Milford. Mr. Jones has suggested that this is sufficient for the court to find that the University did not do all that it could have to prevent the unfortunate incident which occurred.

[34] Before any such inference may be drawn, however, the evidence of Mr. Milford as to how the incident unfolded must be examined.

[35] In his particulars of claim Mr. Milford outlined that at approximately 9:00 pm he was sitting and studying at a gazebo between the Confucious Institute and the Carimac Annex Lab when two men came up to the gazebo and stole his laptop and stabbed him twice in his chest and abdomen.

[36] He did not say where the two men came from or whether they were on motor bikes. There was no indication that he observed them as they came through the main

gates of the campus. His witness statement was sparse in detail. It was Ms. Coleman who filled in the gaps for the court.

[37] She said that as she sat down, she saw two bikers stop on the side of the road and call out to them asking for free Wi-Fi. Mr. Milford responded and the men rode away. Some moments later they saw two men approaching on foot. The men came and sat in front of them. One of the men demanded Mr. Milford's laptop, Mr. Milford reached for the laptop to secure it and the man pulled a knife and cut him on his arm. The other man attacked her. The man that attacked Mr. Milford started running and Mr. Milford chased him. The man that attacked her ran behind them and she followed. She saw a friend and called out to him, and they helped Mr. Milford to the vehicle and took him to the hospital.

[38] It is Ms. Coleman who first mentions men on motorbikes. I note that Mr. Milford never spoke about the events leading to the attack, neither did he detail the attack itself. Ms. Coleman filed her witness statement on July 29, 2025, approximately ten years after the date of the incident. She did not make a connection between the men that she saw on the motorbikes and the men that approached the gazebo. She did however confirm that the area was well lit and that there was a security guard close to gazebo at the gate at Gibraltar. She could not say if this was the post office gate.

[39] I have also considered Mr. Milford's evidence as to the operations at the main gates of the campus. He agreed that there is a barrier system at the gates where cars were stopped, however he said that he didn't know if there was a system where people on motorbikes were searched but to his knowledge, they were not.

[40] Mr. Nesbeth spoke of the security system in place at the University which includes regular foot patrols, 24-hour central surveillance, access entry controls, 24-hour security at points of entry and exit and mandatory searches of suspicious individuals upon entry and exit to the campus.

[41] He said that the University operates an "open campus", which means that members of the public are allowed to access the campus to utilize facilities there. The barrier system and mandatory searches are the University's best efforts to maintain safety and prevent intruders from entering the campus for illicit purposes.

[42] It is noted that Mr. Nesbeth was at pains to point out that the security guards cannot search everyone that enters the campus. The decision to search is based on suspicion and profiling. This would be expected since the University also has an obligation to protect the rights of other users of the facilities from arbitrary searches. The University is not required to be perfect, because there is no foolproof system that can be implemented. What is required is that they do what is reasonable to protect against those who wish to engage in criminal activity on campus. I accept that random searches are conducted at the main gates of the campus and that this is the best option in the circumstances.

[43] Further, given the gap in the evidence as to how the men entered the property, how then can it be argued that a change to the policy dealing with motor bikes would prevent such an incident from occurring? It would be a gigantic leap for me to find that the failure of the University to check people entering the campus on motorbikes led to this unfortunate incident without evidence in support of such a finding.

Take any or any reasonable care to prevent injury or damage to the Claimant

[44] Mr. Milford stated in his witness statement that he received three injuries. Two stabs to the chest and one in his abdomen. He was asked about the witness statement of Ms. Coleman, and he agreed with her account of the incident. He said that before he was cut, he was not aware that the attackers were armed. Thereafter he knew that they were armed and dangerous, but he chased them because the weapon fell and he thought he was out of danger.

[45] According to his evidence he did not call out to the security guard stationed at the post office gate so that individual was unaware of what had transpired.

[46] He agreed that he did not mention in his witness statement that he made an alarm to the security guard at the post. He indicated that a security guard was present at the post that night. In re-examination he said that he did not make an alarm to the guard at the post office gate because after the attack the men ran in the opposite direction of the post office gate in the direction of the chapel.

[47] The security guard was not aware of what took place therefore he or she could not have rendered any assistance. It would be completely different if Mr. Milford had said that he called out to the guard and there was no help forthcoming.

[48] Mr. Kelman has also suggested that Mr. Milford, in reaching for the laptop, made the bad situation worse and that by chasing the attackers there was an intervening act which exacerbated the situation. Ms. Coleman in her evidence did give the impression that the attackers asked for the laptop and it was only after Mr. Milford resisted that he was attacked. The injury and damage sustained therefore were not directly linked to any action or inaction on the part of the University.

Failing to take reasonable care for the safety of students on the compound against risk of danger

[49] The University, in their defence to the claim, stated that they took reasonable care to ensure the safety of Mr. Milford by implementing adequate and appropriate security measures. At the pre-trial review an order was made for an expert report to be provided to assist the Court as to the security arrangements at the University. The expert report and the questions posed, and answers given were admitted and formed a part of the evidence on behalf of the University.

[50] In his expert report Dr. Jason McKay, stated that the University's property is approximately six hundred and fifty acres. The number of security guards deployed at night on the campus was sixty-seven. This he said is by any standard a generous allocation of security personnel. He found that the property was secure and had security personnel posted at the entrances. A property of this nature and size cannot facilitate a close protection security detail. He opined that the security

arrangements at the University on the date of the incident were adequate and could be functional if all persons adhered to the directives as stated in the handbook.

[51] Mr. Kelman cited **Errol Hanna v. University of the West Indies**[11] and asked the Court to find that the facts of that case were similar to the present claim. In that case the claimant, an independent contractor, was shot by unknown gunmen who invaded a construction site on the University's campus. He brought a claim in negligence, breach of contract, and breach of statutory duty under the Act.

[52] It was held that the shooting did not arise from the physical condition of the premises or from any act or omission concerning the University. The University had provided private security and police presence on its premises and had undertaken to oversee security at the construction site. These measures were considered reasonable and sufficient to discharge its common duty of care. Accordingly, the claims in negligence, contract and breach of statutory duty were dismissed.

[53] I agree with Mr. Kelman that the facts of this case are somewhat like that of **Errol Hanna**. There is evidence to suggest as indicated previously that the University employed several strategies to combat the rising level of crime on the Mona campus. It is the duty of Counsel for Mr. Milford to put forward evidence to contradict this or at the very least to suggest that there were alternative options or arrangements that would have increased the security measures on the campus. He who avers must prove. Mr. Milford did not provide the court with any evidence to support his case that the University did not do all that was reasonable in the circumstances to secure the campus and to provide a safe environment for all students.

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[11] Claim No. C.L. 2000/H-104

Conclusion

[54] The combination of the security measures outlined by Mr. Nesbeth, the student handbook, and the warnings given are reasonable methods to prevent criminal activity at the University. Mr. Milford's injuries are a direct result of criminal conduct which in our society unfortunately is far too commonplace. I cannot say however that based on the evidence as presented that the University was negligent or that they breached their statutory duty under the Act. In the round therefore I find that the claim has not been proved to the requisite standard and judgment is entered for the Defendant.

Orders:

1. Judgement for the Defendant.

2. Costs to the Defendant to be taxed if not agreed.