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Legal and Ethical Issues in College Student Affairs

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**Contract Theory. At the core of the legal relationship between private institutions and their students is contract theory. What are the major elements of this institution-student contract? How is the contract established? What elements of the contract provide protection for the institution? What elements of the contract provide protection for students? How is the contract “lived out” in the curricular as well as the co-curricular dimensions of college life? Where are institutions most vulnerable in the contractual relationship? Where are students most vulnerable in the contractual relationship? Provide examples from at least two fairly recent court decisions where it was decided that the contract between an institution and a student (or students) had been breached.**

### **Major Elements of a Contract and How a Contract is Established:**

Before discussing the above questions, it is necessary to define the elements of a contract. Contracts consist of promises (or a promise) that are made from one party to another, and they are binding agreements by law. Contracts may be written, oral, or implied due to circumstances at hand (Contract Theory from <http://encyclopedia.thefreedictionary.com/Contract%20theory>). If a contract is breached, a court will usually award money damages to the wronged party. On occasion, the court may request that the contract be fully carried out to its end.

The major elements of the institution-student contract include the following: offer, acceptance, and consideration (Kaplin & Lee, 1997). The offer explains what the student will get while attending a particular institution. The acceptance piece of the contract is when a student acknowledges that he/she wants the offer that the institution has given. The student commits to attend the institution and receive what the institution has offered. The final part of the contract is the consideration, which is the money that the student will need to give the institution in exchange for his/her education (Kaplin & Lee, 1997).

The contract is seen in all pieces of literature that the university offers. This includes the entire application process, website information, all paperwork sent between a

student and an institution, financial aid information, etc. Anything advertised with an institution's name on it is part of the package that the institution offers. As soon as a student is admitted to an institution, an implied contract exists between the student and the institution; this contract means that if the student complies with the terms offered by the institution, the institution is required to allow the student to receive the degree that he/she seeks (Sheridan, 2004).

### **Protections a Contract provides for Institutions and Students:**

It is important to look at how a contract provides certain protections for both the institution and the student. For the institution, a contract maps out what it will provide for the student in many areas: academics, housing, clubs and organizations, resources that can be found on campus, policies that students are expected to abide by, etc. The contract is more or less a complete listing of everything that the institution provides as well as expects from the students. In order for the student to receive a degree from the institution, the student must adhere to everything that the contract addresses. This is a huge protection for the institution because it is their guide to determine when they are allowed to ask students to leave their campus. If the institution has policies mapped out clearly, the student may be dismissed from the contract if he/she does not comply. Also, if the student does not maintain needed grades or a stated level of academic excellence, the institution may ask the student to either change their behavior or leave the institution. The contract also provides protection for students. The contract assures that students get what they sign up for. If the institution fails to provide what is shown in their contract, it is not adhering legally to the offer. The student has the right to request services based on what is described in the contract. The student should also know what is expected of

him/her in terms of attaining a degree. The contract provides protections for both the institution and the student in order to assure that both parties are given what was agreed upon.

### **How Contracts are Lived Out in the Curricular and Co-Curricular:**

The contract is lived out in both the curricular and co-curricular aspects of college life. Curricular commitments found in contracts include class descriptions, requirements for graduation (for specific majors and general studies), how class-work will be evaluated, policies on cheating, etc. The contract ensures that students know what is expected of them in order to graduate with a particular degree from the institution. Co-curricular aspects of college life that are found within contracts include campus activities, clubs and organizations, housing availability, residence life programs, associated student body duties, etc. Co-curricular involvement is in large part dictated by what the overall contract of the institution includes. The contract maps out what is available to students to enhance their learning outside of the classroom, both through activities and relationships. The contract also includes student standards of conduct which students are expected to abide by while a member of the institution. These student standards of conduct apply both within and outside of the classroom.

### **Why Institutions and Students may be Vulnerable:**

Though contracts tend to clearly explain the expectations placed on both students and the institution, at times, they can leave both institutions and students vulnerable in certain ways. Institutions are vulnerable if their contracts are not comprehensive and leave out explanations of expectations. Contracts must be clear enough that people looking at them can determine both what the institution offers and what a student must do

to receive what the institution offers. If the contract is not clear, it leaves the institution vulnerable because people will be allowed to interpret the contract in very subjective ways. A second way that institutions can be vulnerable when developing contracts is when they do not review their policies and requirements on a consistent basis. Contracts should undergo a regular review process in order to keep them up to date with both legal requirements as well as institutional policies. A review board/committee should be given the task of reviewing the contract and policies on a regular basis. Students can also be vulnerable when they commit to a contract. Students are vulnerable if they fail to take the effort to understand the contract. Often, students do not read or understand the contract that they have agreed to live in accordance with. This can result in students getting in trouble for their actions or failing to follow noted procedures and expectations in both the academic and co-curricular aspects of college life.

**Examples from Two Recent Court Cases:**

One recent example of a student taking his school to court claiming a breach of contract can be seen in the case of Goodman vs. Bowdoin College. One winter, Goodman threw a snowball at a school shuttle van. This action resulted in a fight between Goodman and the shuttle driver. After going through the judicial process, the school found Goodman responsible for what occurred, and he was ultimately placed on indefinite dismissal from the institution. Goodman's father then wrote a letter to Bowdoin claiming that the school had an "improper vendetta" against his son due to a past offense. He also claimed the school had shown reverse discrimination and that the college was trying to cover up its own liability. Goodman appealed the school's decision because he felt that Bowdoin had deviated from their listed judicial procedures because

the fight had occurred on a public street and the college would therefore have no jurisdiction over what happened. Ultimately, Goodman took Bowdoin College to District court claiming they had breached their contract with him based on the description of judicial procedures listed in the handbook. The court ruled in favor of Bowdoin College, affirming their decision to dismiss Goodman. Therefore, Goodman was held responsible for his actions that went against the contract he had signed in deciding to attend Bowdoin College.

A second example where a breach of contract between an institution and a student can be seen is in the case of *Ghosh v. Southern Illinois University*. Ghosh applied for her residency at Southern Illinois University's medical school; she was accepted to the program. Because Ghosh lived in India, she had to maintain a visa to be allowed to study in the states. Due to this, she was delayed in starting her residency by six weeks. Throughout several meetings with her program director, it became clear that her supervisors were disappointed with her performance. Several simulated exercises were set up in order to assess Ghosh's interactions and performance with patients. As her evaluations continued at the six week and three month marks, Ghosh's performance was marked below the appropriate level. Eventually, the program director and other supervisors voted to dismiss Ghosh from the residency program because of the following complaints against Ghosh: falsified charts, inability to conduct routine exams, failure to perform assignments and provide adequate care, and interfering with the education of other residents in the program. Following her dismissal, Ghosh filed several complaints including her being fired because the school did not like that she spoke her opinion openly (first amendment rights) and that she had experienced racial discrimination.

Ghosh claimed that these charges were a breach of contract between her and Southern Illinois University. Currently, Southern Illinois University has asked for a motion of summary judgment, which has been granted. By their claim, Southern Illinois University feels that Ghosh brought no real arguments against them that could be proven. With this summary of judgment being granted, it is clear that Ghosh was the one who did not adhere to her contract with the university.

### Sources Used for Contract Theory Question:

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