

Contractual Relationships

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Higher Education Laws and Regulations

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**By**

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## Contractual Relationships

The purpose of this paper is to analyze contractual relationships. We will seek a clear understanding of the elements and concepts of contractual relationships. With the support of Kaplin and Lee text, The Law in Higher Education, we will evaluate two particular contractual relationships regarding admissions departments and student activities program of two institutions, William Gates College and Liberty State College. We will investigate the authority to contract, and binding elements existent or missing.

### **Contractual Relationship**

One major aspect of any contractual relationship is liability. “Institutions of higher education face potential breach of contract claims from employees, student, and vendors purchasers, or business partners.” (Kaplin & Lee, 2007, 105) When referring to the liability of an institution, we must take into consideration the contract authorization pertaining to the action at hand. Kaplin and Lee states, “The key to the institutions liability is authorization; that is, the institution may be held liable if it authorized the agent’s action before it occurred or if it subsequently ratified the action.” (Kaplin & Lee, 2007, 106) We must ask whether or not the authorization was given properly? This is crucial to recognize for the purpose of defending one’s own institution from liability issues. The level of distinction amongst university decision makers authorizing contracts

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is not as important as the level of liability their authorization holds. Student, trustee, dean, administrator, program director, president, etc; the question at hand is whether or not the authorization was constituted by the institution. So how do we determine the authenticity of the contract authorization? We need to establish and/or verify delegation (written or spoken) of authority. Once established we then look for an agreement between the agent and the principal of authority. In the case of *Brown v. Wichita State University* the court issued the following statement, "To determine whether the record establishes an agency by agreement, it must be examined to ascertain if the party sought to be charged as delegated authority to the alleged agent by words which expressly authorize the agent to do the delegated act." (Kaplin & Lee, 2007, 107) After results are made and enough evidence of agreement and ascertains has been presented we can then determine that authorization was made. Now to examine whether or not the agent has or had implied power. "On the question of implied agency, it is the manifestation of the alleged principal and agent as between themselves that is decisive, and not the appearance to a third party or what the third party should have known." (Kaplin & Lee, 2007, 107) Along with implied power, the concept of ratification should also be examined. When a principal of authority assumes there has been an unauthorized act by an agent before authorization was given, he must immediately deny having anything to do with the authorization. "The doctrine of ratification is based upon the assumption there has been no prior authority, and ratification by the principal of the agent's unauthorized act is equivalent to an original grant of authority. Upon acquiring knowledge of his agent's unauthorized act, the principal should promptly repudiate the act; otherwise it will be presumed he has ratified and affirmed the act." (Kaplin & Lee,

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2007, 107) The final element of contract relationships to be considered is the concept of defense. In the possible event of being sued for breach of contract, an institution should establish a defense. The following can be used for a reliable defense:

- Counterclaim against the other party
- Previous damage from the agent
- Sovereign immunity for public institutions

(Kaplin & Lee, 2007, 109)

## **Admissions**

The Dean of Admissions from William Gates College and the Dean of Admissions from Liberty State College both told potential student Michael Socha that he did not have the requisite background needed for full time admittance. The Dean at William Gates College suggested he take a summer course to be reconsidered. The Dean at Liberty State College suggested a special program offered by the college, which also establishes provisional status to the attending student. The program consists of two initial courses in summer and the two courses in the Fall and Spring. If he passes these courses he would be awarded full time status. To Mr. Socha, Liberty State's provisional program holds more promise. Liberty State's offer seems like a great opportunity, but stating the promise of admission without mentioning full details of what he must do in return, leaves

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room for contractual liability. The statement from William Gates College may hold less promise but if the offer is pursued and the student fails to reach certain criteria, the college has more leverage to defend themselves against any contractual liability issues. Kaplin and Lee states, “Contract law has become an important source of legal rights for students. Postsecondary administrators should be sensitive to the language used in all institutional rules and policies affecting when then institution students. Language suggestive of a commitment (or promise) to students should be used only when the institution is prepared to live up to the commitment.” (Kaplin & Lee, 2007, 302)

## **Student Activities**

Stephanie Hammond, a regional band manager contacted both institutions’ student activities directors about her band playing at both institutions. Both directors contracted with Ms. Hammond for a concert in October. Both directors found the event to be beneficial to students. Providing their college community with such as event would bring the campuses together. In an article written by Barbara Bennett states, “A close relationship with the student government can be set up to limit liability risks.” (Bennett, 1993, 17) Risk management is crucial and contractual liability plays a key role. A student activities director shall always act on behalf of the institution, but must be sure to keep all individual interests aside. Ms. Hammond offered both directors a discount to the concert. Rather than discussing discounts they should concentrate on limiting contractual liability and risk. Bennett explains, “Student organizations and those students or faculty advisors in charge of organized student activities may be tempted to enter into various

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contractual arrangements that could bind the institution not only to the performance of the obvious obligations of the contract, but also to provisions concerning indemnification and insurance.” (Bennett, 1993, 8) Certain contractual policies and obligations are required when it comes to outside entities. For example:

1. What has just been bound by this contract for the institution?

- Services
- Transportation
- Need of off-campus resources

2. Is insurance needed?

- Outside liability coverage
- Accidental Coverage
- Property Coverage

The mission of the institution and value of the event should remain the core concern.

In conclusion, the purpose of this paper was to analyze contractual relationships. A clear understanding of the elements and concepts of contractual relationships was provided. With the support of Kaplin and Lee text, The Law in Higher Education, we evaluated two particular contractual relationships regarding admissions departments and student activities program of two institutions, William Gates College and Liberty State

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College. We investigated the authority to contract, and binding elements existent or missing.

### References

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