The Student-Athlete Crisis: Does the University Have a Duty to Educate?

Scott A. Broadhead
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I. INTRODUCTION

Cheating in intercollegiate athletics is not extraordinary nor unprecedented. The first recorded incident of cheating occurred in 1852 when Harvard defeated Yale in a rowing contest.\(^1\) Since then, such practice has not only been common, but almost a tradition. In the late 1970s and early 1980s, there were a number of universities placed on probation by the National Collegiate Athletics Association (NCAA). These violations continue today with the University Nevada Las Vegas, University of Florida, University of Tennessee and the University of Texas El Paso recently being placed on probation by the NCAA. One of the principal charges against these universities is their lack of academic integrity.

The academic education of today's student-athletes is deplorable. The few exceptions are those student-athletes who are on the academic all-American teams. Unfortunately, there are too few of these stellar student-athletes. Supposedly, young athletes are recruited by universities to participate in athletics in exchange for a college education, but they rarely receive the education promised. Those student-athletes are often academically unqualified to begin with. Even worse, the universities, instead of providing adequate study time, encouraged the athletes to take classes only as a means of maintaining eligibility for their respective sports.

This article will explore whether universities have a duty to educate their student-athletes. It will begin by first defining the problems which exist in inter-collegiate athletics and then examining the legal recourse available to student-

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athletes who have finished their college athletic careers without receiving an adequate education.

II. THE PROBLEM

Many student-athletes finish their college athletic careers without obtaining an adequate college education. In 1986, 17,623 men played Division I college football and basketball. Of those athletes only 198 (or 1%) went on to become professional athletes. Moreover, the odds were even worse for high school players where only one in 10,523 basketball players made it to the NBA and one in 4,966 football players went to the NFL. With only 1% of university student-athletes actually earning a living in professional athletics, it is imperative that student-athletes take advantage of their educational opportunity while attending school.

Only an estimated 27% of college basketball players and 30% of college football players graduate. A 1984 study revealed that only 33% of pro football players graduated from college, 20% of NBA players, 16% of major league baseball players and 8% of NHL players. Moreover, it has been estimated that as many as 20% to 25% of all black athletes are functionally illiterate. Such figures indicate that many college student-athletes receive little in return for their athletic performances.

Kevin Ross for example, a former Creighton University basketball player returned to preparatory school after realizing "that despite four years of college he still lacked the most rudimentary educational skills." Although Creighton offered to pay for Ross to learn to read and write, the fact remains that the University broke NCAA rules by allowing Ross to play for its basketball team. The University exploited Ross' athletic ability in return for only

3. Id. at 11.
4. Id. at 12.
basic skills training, rather than a university education. 8

Another example is Alan Page, a former Minnesota Vikings Hall of Fame lineman. Page recalled a meeting with eight other linemen to go over the playbook. “We had each spent four years in colleges with decent reputations . . . and I remember that two of us could read the playbook, two others had some trouble with it but managed, and four of my teammates couldn’t read at all.” 8

There are several reasons for the educational crisis with college athletes: (1) the student-athletes’ failure to pass or attend courses; (2) the lack of academic qualification for admission to a particular university; (3) the failure of the universities to provide proper academic counseling; and (4) the enormous pressures placed on universities to make a profit out of their athletic programs.

A. Failure to Pass or Attend Courses

The 1979-80 school year is typically indicative of lack of educational integrity of universities. For instance:

- Eight Arizona State football players were declared ineligible because they received credit for an extension course that they never attended.

- Nineteen University of Southern California football (USC) players and seven other athletes were enrolled in a course reserved for members of the debating team which none of the athletes had ever attended.

- Five University of New Mexico basketball players were declared ineligible for receiving credit for a course they never attended.

- San Jose State football player Steve Hart was declared ineligible for falsely claiming credit for two courses.

8. Id.
• University of Utah forward Danny Vranes was declared ineligible for receiving credit for a course he never attended.

• NCAA 400-meter champion Billy Mullins of USC was accepted into the university based on a transcript which indicated that he had received 28 credits in the fall semester for courses at four different junior colleges, despite the courses having conflicting class times.

• New Mexico Basketball Coach Norm Ellenberger and Assistant Coach Manny Goldstein were suspended when a police wiretap revealed that Goldstein had arranged for lineman Craig Gilbert to receive bogus credit through Oxnard College with Ellenberger’s consent. 10

The 1979-80 school year provided forty-three cases of athletes who received credit for courses in which they did not fulfill the class requirements or even attend class. 11 However, this number includes only those caught cheating.

In 1988 Curtis Jones, a former student-athlete, sued his former schools for allowing him to pass without ever learning to read and write. 12 Jones alleged that by the time he reached the fourth grade, the school board knew that he was “intellectually deficient and would require special education in a school for slow learners.” 13 When Jones reached junior high school it became apparent that he was a very gifted basketball player. The school board then transferred him into a regular junior high school. Upon graduation from high school, Jones attended North Idaho Junior College (NIJC) where he was “academically carried” for two years while he played basketball. 14 In Jones’ complaint, he alleged that professors did his work, helped him to cheat on his exams, and passed him in courses he never attended. 15 Although Jones planned to attend the University of Michi-

11. Id.
13. Id. at 422.
14. Id.
gan (which was also aware of his illiteracy), he suffered a nervous breakdown during his second year at NIJC because of his illiteracy.\textsuperscript{16} However, the Michigan Court of Appeals side-stepped the issue of educational malpractice and held that the school board was immune from liability.\textsuperscript{17}

Another prime example is the Bill McGill case. As a college basketball superstar for the University of Utah, McGill led the nation in scoring in 1961-62 with an average 38.8 points per game. Although McGill was the number one pick in the 1962 NBA draft, he never made it big, and he was out of basketball by the time he was 28 years old. With no education, McGill was homeless for several years before finding a job as a janitor for $84 a week.\textsuperscript{18} Such examples illustrate the harm caused when universities allow their student-athletes to pass courses which they neither attended nor performed the class work necessary to keep them eligible.

B. Student-Athletes not Academically Qualified to Be Admitted to the University

One of the main reasons that some student-athletes are permitted to pass classes they never attended (or failed to perform any work in) is that these student-athletes were never fully qualified to attend the university in the first place.

Universities have come under fire for "recruiting and admitting athletes who patently lack the intellectual tools to succeed academically."\textsuperscript{19} Dale Brown, the basketball coach at LSU and one of the leading proponents of change in intercollegiate athletics observed, "Coaches will inherit a student from a high school with a 3.0 average who, in fact, is reading at a sixth grade level."\textsuperscript{20}

In 1986, Proposition 48 went into effect which required an incoming student-athlete to have attained a 2.0 minimum grade-point average in eleven college preparatory courses and a minimum of 700 on the SAT or 18 on the ACT.\textsuperscript{21}

\textsuperscript{16} Jones, 431 N.W.2d at 422.
\textsuperscript{17} Id. at 420.
\textsuperscript{18} Underwood, supra note 10, at 62.
\textsuperscript{19} Waicukauski, supra note 1, at 80.
\textsuperscript{20} Underwood, supra note 10, at 41.
\textsuperscript{21} Steve Weiberg, Study: Reform Would Hurt Blacks, USA TODAY, Oct. 1,
Many coaches and schools complained about the rule because of its harsh effects. Civil rights groups complained the loudest because of its possible negative impact on black athletes. Of all the Proposition 48 casualties during the 1990-91 school year, 68.6% of them were blacks.22

Presently, the NCAA Presidents Commission wants the grade-point average raised to 2.5 in thirteen college preparatory courses.23 This will come to a vote in January 1992, but many coaches, universities and civil rights groups are already upset. Raising the standards will likely increase freshman ineligibility by 5% and of those, 74% will be blacks.24 Such turmoil shows that many universities are more concerned with winning games and making money than with educating student-athletes. Undoubtedly, many do not care whether or not an athlete is academically qualified; once the athlete is enrolled, they can keep him eligible.

C. Lack of Proper Academic Counseling

Many student-athletes have been counseled by their university to major in "eligibility." In Echols v. Board of Trustees of the California State University and Colleges, seven former students who were recruited to play basketball sued their universities under tort and contract law.25 Among their allegations was the claim that their coaches had advised them to enroll primarily in physical education courses in order to protect their athletic eligibility. In some instances, the students were instructed to re-enroll in courses they had already passed. The students were also counseled to accept grades for courses which they had never attended. Echols was a "B" student in high school and the student body president. He said the coaches became upset when players took courses that could jeopardize the athletes' eligibility. Echols had to drop the "easy" classes behind the coaches' backs so that he could take more substantial courses such as economics and English.26 Another plaintiff,

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1991, at 9C.
22. Id.
23. Id.
24. Id.
25. Underwood, supra note 10, at 48. Since the plaintiffs settled out of court, the important issues concerning the relationship between the student-athlete and the university were never resolved.
26. Id.
Dwight Slaughter, majored in criminology during his four years at the university, but never took a criminology course.27

A prime example of "eligibility" is O.J. Simpson. O.J. is widely recognized as the top running back of all-time, and was a Heisman trophy winner. He is also a member of the pro-football Hall of Fame. However, O.J. was not an all-time great student. He completed a four-year football career a full fifty-six credits short of a college degree.28

Athletes are allowed to remain just eligible enough to participate because "the boy is really an athlete first and a student second."29 William E. Davis, the President of the University of New Mexico, spoke of the low expectations his university has for student-athletes: "Our recruits were recruited to be athletes, not students. It was never the expectation that they'd get their ass out of bed at 8 o'clock to go to class and turn in their assignments."30

In 1982, the United States District Court of Minnesota expressed skepticism towards the University of Minnesota's academic integrity:

The plaintiff and his fellow athletes were never recruited on the basis of scholarship and it [sic] never envisioned they would be on the Dean's List. Consequently we must view with some skepticism the defendant University's claim, regarding academic integrity. This court is not saying that athletes are incapable of scholarship; however they are given little incentive to be scholars and few persons care how the student athlete performs academically, including many of the athletes themselves. The exceptionally talented student athlete is led to perceive [that] the basketball, football, and other athletic programs as farm teams and proving grounds for professional sports leagues. It well may be true that a good academic program for the athlete is made virtually impossible by the demands of their sport at the college level. If this situation causes harm to the University, it is because they have fostered it and the institution rather than the individual should suffer

27. Ofari, supra note 6, at 48.
29. J. Michener, Sports in America 198, 203 (1976), quoting Bear Bryant, the second winningest coach in the history of college football.
In one interesting case, Wake Forest University terminated Greg Taylor's scholarship because he refused to participate in team practice sessions. Taylor claimed such participation "interfered with [his] reasonable academic progress." The University required a 1.35 grade point average after the freshman year, and Taylor's was only 1.0. Despite an improvement to 1.9 in the spring and to 2.4 in the fall, Taylor still refused to participate in the football program. Therefore, the university canceled his scholarship for his breaching the contract. After graduation, Taylor sued the university to recover his educational expenses for the last two years. The court ruled that it was not up to Taylor to determine what is "reasonable academic progress." Although it was apparent Taylor was not willing to perform his contractual obligation, it was equally apparent that the university was not concerned with Taylor's academic progress as a student.

D. Too Much Financial Pressure Involved in Intercollegiate Sports

Universities are often concerned with their athletes' eligibility because of the tremendous revenue the athletic programs produce; football and basketball in particular. For example, if a university has 95 football scholarships at a cost of $10,000 for each athlete, this adds up to $950,000, excluding coaches' salaries and equipment. In order to remain solvent, the university must deliver a winning team. To deliver a winning team, maintaining the eligibility of its best athletes becomes imperative.

A recent study of Division I programs shows that 50% of university sports programs lose money. Eighty of ninety-three schools responded to the study and forty of the schools reported losses. For example, Auburn reported losses of over $3.7 million; Kansas State and Central Michigan $3 million; Michigan and Eastern Michigan over $2.5 million;

33. Id. at 382.
Maryland and Nebraska $2 million; and Wisconsin, Ohio State, Kent, TCU and Texas A&M each $1.5 million. The pressure to make money is severe, but the pressure not to lose millions of dollars can cause universities to sacrifice their academic integrity in return for financial survival.

Pepper Rodgers, formerly coach of Georgia Tech once said:

If I were coaching at a school where you could give a guy five hours of correspondence courses during the summer to keep him eligible, hell, yes, I'd give 'em to him. So would every other football coach, to my knowledge. Why? Because that would be the rule at that school, and the alumni are going to fire me and my wife and my kids and my assistant coaches and their families if a 6'2", 220-pound halfback who can run the 40 in 4.5 isn't eligible and we don't win football games.\(^{36}\)

With so much pressure on the university to make money off athletic programs, some universities must keep athletes eligible even if academic integrity suffers. With pressure on the university comes pressure on the athletes to concentrate on athletics rather than on studies. Minnesota center Steve Tobin, a geography major with a "B" average, admitted that he dropped all but four credits during the 1978 football season because he did not have adequate time to study. He said:

People don't seem to understand what we go through. I'm a lineman and I have to rest at least an hour every day when I get home from practice until my headache goes away. There's no way I can open a book. When we travel, we leave Friday morning and usually don't get back to Minneapolis until sometime Saturday night. I'm not saying I would study the whole time, but if I wanted to, I could. But not while playing football. The weekend's shot.\(^{37}\)

In short, the student-athletes are simply not being educated. Even though the students have some legal recourse, this is an area where the law is unsettled.

35. \textit{Id.}
III. LEGAL REMEDIES

A. Contract Law

The student-athletes who have not received adequate education can seek legal recourse from the universities under contract law. It is indisputable that a contract exists between a student and a university. For the student, he or she pays tuition, maintains satisfactory grades and abides by university rules. For the university, it promises to impart the necessary knowledge and to award the degree when the student meets the requirements. In addition, the universities have an implied obligation to provide an atmosphere conducive to learning, to provide the curriculum and to give adequate and helpful counseling.

Naturally, the courts have recognized the contractual relationship between student-athletes and their universities. Student-athletes participate in an athletic program in exchange for a university education. Like any other student, the student-athlete has the right to expect universities to perform their contractual obligations of teaching the knowledge necessary to obtain a degree.

44. It matters little whether the contractual relationship is based on one contract or two contracts: (A) athletic participation in exchange for a university education, or (B) athletic participation in exchange for tuition money, then tuition money in exchange for a university education.
1. Promise to act in good faith

On one hand, a university cannot meet this promise by failing to graduate its student-athletes, permitting them to pass classes they never attended, counseling them to enroll in only non-core classes, providing them little study time, and allowing them to finish four or five years of college as illiterates. On the other hand, it might be easy for athletes to claim the university's violation of good faith. However, the student-athlete has to show the necessary evidence. In addition, he must show that he acted in good faith by attempting to gain knowledge. Also, he has to prove that such knowledge was vital for him to obtain a meaningful education. Accordingly, he must demonstrate he relied on the university's promise to act in good faith by providing him an education.

2. Promise to provide an atmosphere conducive to learning

A student-athlete may point to the amount of practice time the university requires as a violation of its promise to provide an atmosphere conducive to learning. However, it appears that a violation of this promise will be hard to prove because of the game and practice time restrictions placed on the schools by the NCAA. Courts are unlikely to rule that the time limits set by the NCAA are unreasonable. A student-athlete may also claim that inadequate academic counseling violates the promise of a good learning atmosphere.

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46. See Lowenthal, No. A-8525; Olsson, 402 N.E.2d 1150; Swanson, 402 A.2d 401; Nordin, supra note 45.
47. See Lowenthal, No. A-8525; Olsson, 402 N.E.2d 1150; Swanson, 402 A.2d 401; Nordin, supra note 45.
49. Id.
3. Promise of adequate academic counseling

Student-athletes who are counseled to take courses simply so they can remain eligible may claim the university violated the promise of adequate academic counseling. This is not reasonable nor good faith counseling.

As noted, the student-athlete has an important evidentiary hurdle to overcome. He must show that he acted in good faith in following the university's counseling. The student-athlete will have to prove he justifiably relied on the university's counseling and representations. He could use as evidence (1) the breadth of his curriculum, (2) the counseling offered, (3) the number of absences due to athletics, (4) his own exams, papers, etc., (5) records of his complaints, (6) passing grades received in courses he never attended, and (7) the paternal relationship between himself and the coach and his staff. If the university exploits an athlete's talent without imparting an education in return, the university is unjustly enriched by virtue of its superior bargaining position.

4. Academic abstention

Although student-athletes clearly have rights under contract law, there is a problem with courts becoming involved in university educational practices. This is the doctrine of academic abstention. The academic abstention doctrine is a policy decision by the courts not to intervene in the administration of universities. Recently, however, this doctrine has suffered chinks in its armor. For example, in Hall v. University of Minnesota the court ruled that the university must make academic decisions based on academic criteria. In Lowenthal the court delved into Vanderbilt University's administrative procedures when the court closed one of its doctoral programs. In these cases, the courts

51. Johnson, supra note 48.
52. For a history of this doctrine see Nordin, supra note 45, at 145-49. This doctrine has been closely followed in cases in which a state school is involved, such as a high school.
54. Lowenthal v. Vanderbilt Univ., No. A-8525 (Ch. Ct., Davidson County, Tenn.)
have ignored the abstention doctrine because a clear and unambiguous contract existed between the student and the university. Consequently, as the contractual relationship between the student and the university becomes clearer, the doctrine of academic abstention becomes less persuasive.

B. Tort Law

A student-athlete may seek a remedy through tort law. On one hand, the courts have not been very receptive to such claims under tort law; on the other, such claims may actually have a better legal basis for recovery than claims in contract. Available claims include: negligence, intentional tort and misrepresentation.

1. Negligence

Section 328A of the Second Restatement of Torts enumerates the elements of negligence as (1) a duty owed to the plaintiff, (2) a breach of the duty by the defendant, (3) harm caused by the defendant's breach, and (4) the harm suffered by the plaintiff is compensable by damages.

A student-athlete who has not received an education from his university would have little trouble meeting these elements. The Restatement states that when a person undertakes to serve another and the other relies on that service, the actor assumes a duty to perform that service non-negligently and the actor will be liable for harm resulting from negligent performance. Further, "[w]here performance clearly has begun, there is no doubt that there is a duty of care." The university clearly has undertaken the duty to educate the student-athlete by admitting him into school, and by enrolling and teaching him in courses. The athlete is


56. A private wrong or injury from the breach of a legal duty that exists by virtue of society's expectations concerning interpersonal conduct. BARRON'S LAW DICTIONARY at 482 (2d ed. 1984) [hereinafter BARRON'S].

57. The RESTATEMENT (SECOND) OF TORTS is an orderly statement by the American Law Institute of the general case law of torts in the United States. Id. at 408.

58. Restatement (Second) of Torts § 328A (1965).


60. PROSSER, supra note 58, at 346.
relying on the university to educate him.

Once the duty has been established, the student-athlete must show that the university breached the duty by not educating him. This is a factual question. Evidence of the breach of the duty to educate may be obtained by looking at the student's academic progress in school and assessing his educational skills (i.e. literacy).

The student-athlete must have suffered a harm. Being uneducated is clearly a harm, but the harm in this case is a loss of an expectancy or failure to receive a benefit. Although this is not the type of harm commonly associated with tort cases, loss-of-benefit harm is compensable. Legal malpractice cases allow plaintiffs to recover based on a benefit that should have been recovered, as do tortious interference cases.

Finally, the student-athlete must show that the university is the cause of the student-athlete's lack of education. Liability for a student-athlete's failure to learn is a foreseeable consequence of taking on the duty to educate the athlete. An athlete's failure to learn, in many cases, may be caused by the university. However, it is possible that some other event or act caused the athlete not to learn. The student-athlete will have to show that his failure to learn was not due to his inability or unwillingness to learn.

The student-athlete will have to overcome two defenses. First, the athlete will have to show that he is not contributorily negligent. This may be difficult to overcome because the student-athlete may knowingly allow or even participate in the neglect of his education. Second, the student-athlete must prove he did not assume the risk of not receiving an education by entering the university with the understanding that it would not educate him.

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60. Defendant's denial of the truth of the plaintiff's claim. A defense can be both a simple denial or an offer of new evidence to prove the falsity of plaintiff's claim. BARRON'S, supra note 55, at 122.
61. Conduct by the plaintiff which is the legally contributing cause to the plaintiff's own harm in addition to the negligence of the defendant. Id. at 309.
62. A defense to a negligence claim in which defendant claims that the plaintiff had knowledge of the risk yet voluntarily exposed himself, thereby relieving the defendant of legal responsibility. Id. at 32.
2. Intentional torts

The law of intentional torts is "in a process of growth, the ultimate limits of which cannot as yet be determined." Since the limits of intentional torts are not as clearly defined as in negligence law, an intentional tort based on a refusal to educate a student holds the promise of success. But the fact situation must be such that the student-athlete can claim that the university intentionally breached its duty to educate. An intentional tort carries a heavy burden of proof. However, this may be an advantage in securing judicial recognition since the university's breach must be demonstrably clear and open.

3. Misrepresentation

The elements of misrepresentation are: (1) a false representation made by the defendant; (2) the defendant knows or believes the representation is false or has no sufficient basis for knowing whether the representation is true or false; (3) the defendant intends for the plaintiff to rely on the representation; (4) the plaintiff justifiably relies on the representation; and (5) the plaintiff is damaged by such reliance.

In short, the student-athlete must prove three important, yet difficult, elements. First, the student must show that the university's representations concerning his education were false. Second, the student must demonstrate the university knew or reasonably believed the representation to be false. The second element will be hard to show because it is difficult for most jurors to imagine that a large-scale (and perhaps local) university never intended to educate its students. Third, the student must show that he legally relied on the university's representations. The reliance element of the tort will be easier to prove, but once again the student-athlete will have to show he justifiably believed that the university would educate him. The university will attempt to prove that the student-athlete actually attended

63. PROSSER, supra note 58, at 347.
65. PROSSER, supra note 58, at 346-48.
solely for the benefit of its athletic program.  

There are three reasons that a tort claim may not be the best method of recovery for the student-athlete. First, the courts may be reluctant to impose upon universities the possibly heavy monetary burden that tort claims often bring. However, this could be solved by universities' liability insurance. Second, some states still have governmental immunity statutes for tort claims. Such statutes should apply to any state-owned university, and third, the statute of limitations for torts is short.

C. Damages

If a valid cause of action is deemed to exist and a case goes to trial, the damages that a student-athlete receives will vary depending on the jury's determination. Under contract law, a jury might make the university educate the student or specifically perform the contract. This remedy, however, is rarely available. Most likely the victorious student-athlete would be awarded damages in the amount of what a comparable university education would cost. But under tort law, a jury may not only award the cost of education, but also damages for any ill effect the student-athlete suffered because of the failure to receive an adequate education. A jury may also award punitive damages based on a finding that a particular university acted in bad faith.

IV. CONCLUSION

There are legal avenues available for student-athletes to enforce their right to a university education. However, even if all the elements of a contract or tort claim are met, the biggest hurdle for the student-athlete will be to convince the court to recognize the action as valid. Though recent cases do justify a degree of optimism, the academic abstention doctrine still presents a formidable obstacle. The courts should recognize this cause of action not only because the

66. Comment, supra note 64, at 782-84.
68. The statute exempts governmental institutions from liability for injuries caused while performing their official duties. BARRON'S, supra note 55, at 218.
elements are satisfied, but because enforcing an obligation to educate student-athletes serves an important public policy.

With the crisis in education that exists in this country, more schools need to take their obligations seriously. Students and parents cannot raise the educational level of this country by themselves; universities must be willing to shoulder their share of the burden. Allowing universities to shirk their educational obligations does not serve academic integrity, educational progress or the integrity of contracts.

Clearly stronger adherence to NCAA rules would improve the situation, but rules alone cannot solve the problem. Until universities police themselves better, the most effective recourse for the student-athlete appears to be the courts. Legal recourse is also an indirect way of forcing universities to follow NCAA regulations more carefully and to regain their academic integrity.

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