Protecting Universities' Economic Interests: Holding Student-Athletes and Coaches Accountable for Willful Violations of NCAA Rules

Kevin Stangel

Follow this and additional works at: http://scholarship.law.marquette.edu/sportslaw
Part of the Entertainment and Sports Law Commons
PROTECTING UNIVERSITIES’ ECONOMIC INTERESTS: HOLDING STUDENT-ATHLETES AND COACHES ACCOUNTABLE FOR WILLFUL VIOLATIONS OF NCAA RULES

The role of intercollegiate athletics at major colleges and universities has undergone a dramatic change since the inception of the National Collegiate Athletic Association ("NCAA") in 1906. Amateur athletics have become a very big commercial enterprise. Each year, collegiate athletics generates millions of dollars in revenue for universities. The NCAA negotiates billion dollar television contracts, conducts national championships, and markets many products bearing its name. For example, the Columbia Broadcasting System ("CBS") recently agreed to pay the NCAA six billion dollars over an eleven-year period for the exclusive rights to the Division I Men's Basketball Championship.

This increased commercialism has led the NCAA and its member institutions to a very difficult balancing act between maintaining academic integrity and amateurism, while striving to generate large revenues in order to operate a self-financing athletic department. Many coaches, politicians, and journalists argue that the NCAA and its member institutions are exploiting the student-athlete in order to generate large amounts of revenue. However, many of these same commentators do not want to hold student-athletes accountable for their own willful violations of NCAA rules and regulations.

Despite what many individuals believe, most NCAA Division I athletic programs actually lose money. Membership in Division I requires a college or university to sponsor at least fourteen varsity sports, most of which do not generate revenue. Thus, when a student-athlete knowingly or willfully violates NCAA rules and regulations, it may not only

2. Kyle Parks, Marketing Madness Series: The Final Four: St. Petersburg, St. PETERSBURG TIMES, Mar. 28, 1999, at 1B.
7. Id.
jeopardize the student-athlete’s eligibility, but it may also subject the university to costly NCAA investigations and sanctions. Recent examples of academic fraud, gambling scandals, and prohibited contact with sports agents, have caused great harm to universities’ reputations and economic standings, while the offending athlete walked away unscathed.

This article argues that student-athletes are adults and should be held accountable for their willful disregard of long-established NCAA rules and regulations. Schools invest significant time and money into student-athletes in the form of recruiting, scholarships, uniforms, equipment, and travel. The university must have a means of protecting its investment from athletes who have no regard for established rules and coaches with a win-at-all-costs attitude. However, the question remains as to the best method with which to hold coaches and student-athletes accountable for violating rules that cause the university to be exposed to NCAA penalties.

The analysis is set forth in six parts. Part I explains how coaches and athletes blatantly violate established NCAA rules for their own benefit at the expense of the university. Part II discusses the legal relationship embodied in the contractual relationship between the student-athlete and the university in the National Letter of Intent, the Financial Aid Agreement, and the Student-Athlete Statement. Part III will examine any valid legal claims a university may have against a student-athlete through its contractual relationship. Part IV will examine if it is in the university’s best interest to pursue a legal claim against a student-athlete. Part V will discuss the drafting of coaches’ contracts and recommend possible changes in the structuring of the contract in order to hold coaches accountable for their involvement in violations. Part VI will explore alternative ways a university can protect its reputation and economic interest. This section will examine possible non-legal solutions along with any consequences that may accompany these recommendations.

9. Id.
10. Id. at 163.
I. The Problem

Much has been written recently concerning the unethical conduct of student-athletes, coaches, and sports agents.\(^{11}\) Recent examples of student-athletes receiving extra benefits from sports agents, or boosters and coaches establishing a system of academic fraud to maintain athlete eligibility, have had a detrimental impact on unsuspecting universities.\(^{12}\) However, little has been done to hold coaches and athletes accountable for their role in these actions.\(^{13}\)

The cost of the University of Minnesota’s investigation into academic fraud in men’s basketball was almost $1.9 million.\(^{14}\) Not taken into account in this total was the $1.5 million buyout of former coach Clem Haskins’ contract or the cost of hiring a replacement coach.\(^{15}\) Furthermore, the NCAA has yet to impose penalties upon the university for the cheating scandal, which may include financial sanctions.\(^{16}\)

The scandal also caused harm to the university’s reputation.\(^{17}\) According to Representative Peggy Leppik, Chairwoman of the Higher Education Finance Committee in Minnesota, “[t]here is no doubt that significant harm has been done to the university’s reputation in the eyes of both the public and the Legislature.”\(^{18}\) Although the investigation implicated Haskins’ involvement in the scandal, he received a $1.5 million buyout and escaped accountability for his role.\(^{19}\) In addition, at least eighteen former men’s basketball student-athletes escaped accountability, leaving the athletic department with the difficult task of paying the bill.\(^{20}\)

---


14. Mary Jane Smetanka, U Inquiry Costs Nearly $2.2 Million: The Total is Higher than Expected, but the NCAA is Pleased with the Report’s Thoroughness, STAR TRIB. (Minneapolis), Feb. 24, 2000, at 1A.

15. Id.

16. Id.

17. A Sample Of Reaction to the U Story, STAR TRIB. (Minneapolis), Nov. 20, 1999, at 12A.

18. Id.


20. Smetanka, supra note 14, at 1A.
Another example of an athlete causing economic harm to a university was Marcus Camby's involvement with sports agents.\textsuperscript{21} Camby, who admitted receiving cash and expensive jewelry from sports agents, subjected the University of Massachusetts to NCAA violations.\textsuperscript{22} The University of Massachusetts was stripped of its 1996 regional championship and forced to return $151,000.00 in tournament money.\textsuperscript{23} However, Camby escaped accountability.\textsuperscript{24} In 1996, Camby signed a three-year, $8 million contract after being selected as the second overall draft pick by the Toronto Raptors.\textsuperscript{25} Subsequently, Camby signed a six-year, $40 million contract with the New York Knicks.\textsuperscript{26}

The above examples are only two of numerous examples of coaches and student-athletes escaping accountability while the university suffers harm to its reputation and to its wallet. Moreover, unethical conduct of student-athletes and coaches is not going to disappear. In an atmosphere populated by players craving money, gamblers looking for a chance to get rich, and unscrupulous agents looking to secure future clients, problems will continue to persist.

II. LEGAL RELATIONSHIP BETWEEN THE STUDENT-ATHLETE AND THE UNIVERSITY

In order to understand the legal relationship between the student-athlete and the university, it is important to examine their contractual relationship.\textsuperscript{27} Traditional contract doctrine can function to hold student-athletes accountable for their willful violations of NCAA rules and regulations. This accountability begins by recognizing the reasonable obligations placed on student-athletes that arise from the contractual relationship between a student-athlete and the university.

A. Overview of Modern Cases

Many cases have examined the potential contractual relationship between a student-athlete and a university in situations where student-ath-

\begin{thebibliography}{9}
\bibitem{22} \textit{Id.}
\bibitem{23} \textit{Reports Name Vegas Lawyer in Auburn Eligibility Scandal}, USA TODAY, Mar. 13, 2000, at 10E.
\bibitem{24} Moorman & Hums, \textit{supra} note 8, at 164.
\bibitem{25} \textit{Id.}; \textit{Reports Name Vegas Lawyer in Auburn Eligibility Scandal}, \textit{supra} note 23, at 10E.
\bibitem{26} Shawna Richer, \textit{Knicks' Camby Marvels at Raptors' New Digs: Knick Forward Reflects on the Turmoil of His Last Days in Toronto}, THE GLOBE \& MAIL (Toronto), Mar. 22, 1999, at S3.
\end{thebibliography}
letes alleged a breach of contract by their university. Although these suits were brought by student-athletes, a similar analysis can be used to examine a possible claim brought by a university. In analyzing the relationship, many courts have acknowledged that the university-student relationship is contractual in nature, especially when financial aid is a part of the agreement.\(^2\)

*Taylor v. Wake Forest University* represented "the first major court decision to hold that a contract exists between the student-athlete and the university."\(^3\) In *Taylor*, a student-athlete football player alleged that the university wrongfully terminated his scholarship after he refused to participate in team practices due to his poor academic performance.\(^4\) "Taylor’s grade point average at the end of his first semester of his freshman year was 1.0 on a 4.0 scale."\(^5\) As a result of his low grade point average, Taylor was ineligible to play football during the spring semester of his freshman year.\(^6\) However, after improving his grade point average enough to regain his athletic eligibility, Taylor refused to participate in football during his sophomore year.\(^7\) The university then terminated Taylor’s scholarship, citing his failure to comply with his contractual obligations.\(^8\) Taylor continued to attend Wake Forest University and sought to recover the $5,500.00 he would have incurred during the last two years of college.\(^9\)

The trial court granted summary judgment for Wake Forest University and the North Carolina Court of Appeals affirmed.\(^10\) Affirming the trial court’s grant of summary judgment, the appellate court stated that Taylor failed to comply with his contractual obligations. The appellate court stated:

As long as his grade average equaled or exceeded the requirements of Wake Forest, he was maintaining his scholastic eligibility

---

28. Moorman & Hums, supra note 8, at 165.
29. Id.; Cozzillio, supra note 27, at 1283-84.
33. Id. Wake Forest University required a 1.35 GPA after the first year, a 1.65 after the second year, and a 1.85 after the third year.
34. Id.
35. Id.; Nestel, supra note 30, at 1403.
37. Id.
for athletics... When he refused to do so in the absence of any injury or excuse other than to devote more time to studies, he was not complying with his contractual obligations.\textsuperscript{38}

A second prominent case that discussed the contractual relationship between a student-athlete and a university is \textit{Begley v. Corporation of Mercer University}.\textsuperscript{39} In \textit{Begley}, a student-athlete brought a breach of contract claim against the university for revoking his scholarship when it discovered his high school grades did not meet the NCAA requirements.\textsuperscript{40} The court granted Mercer University summary judgment, stating that Begley's grades violated a provision in the scholarship agreement.\textsuperscript{41} More significantly, the court reaffirmed the belief that an athletic scholarship created a contractual relationship between the athlete and university.\textsuperscript{42}

Finally, a third and more recent decision implies that a court would not have any difficulty in viewing a scholarship agreement as an enforceable binding contract.\textsuperscript{43} In \textit{Ross v. Creighton University}, the student-athlete claimed that the university failed to properly educate him.\textsuperscript{44} The court concluded that it was impossible to enforce a claim that the university failed to provide 'adequate' educational services because a court was incapable of determining the quality of education.\textsuperscript{45} Although this case did not directly address whether the scholarship was a contract, the court concluded that the relationship between the university and a student-athlete is, in part, contractual.\textsuperscript{46} Furthermore, the court concluded, "[a] contract between a private institution and a student confers duties upon both parties which cannot be arbitrarily disregarded and may be judicially enforced."\textsuperscript{47}

The decisions in \textit{Taylor}, \textit{Begley}, and \textit{Ross} have consistently used a contractual analysis to define the parties' respective rights and responsibilities to resolve disputes.\textsuperscript{48} The \textit{Taylor} and \textit{Begley} decisions endorse the proposition that the athletic scholarship creates a contractual rela-

\textsuperscript{38} \textit{Taylor}, 191 S.E.2d at 382.
\textsuperscript{39} 367 F. Supp 908 (E.D. Tenn. 1973).
\textsuperscript{40} Nestel, \textit{supra} note 30, at 1403.
\textsuperscript{41} \textit{Id.} at 1403-04.
\textsuperscript{42} \textit{Id.} at 1404.
\textsuperscript{43} Davis, \textit{supra} note 36, at 191-92.
\textsuperscript{44} 957 F.2d 410, 412 (7th Cir. 1992).
\textsuperscript{45} Davis, \textit{supra} note 36, at 191-92.
\textsuperscript{46} \textit{Ross}, 957 F.2d at 413.
\textsuperscript{47} \textit{Id.} at 416 (quoting DeMarco v. University Health Sciences, 352 N.E.2d 356, 361-62 (1976)).
\textsuperscript{48} Moorman & Hums, \textit{supra} note 8, at 165.
tionship between the university and the student-athlete. Therefore, a university may try to use contract analysis as a mechanism to hold a student-athlete accountable when he or she willfully violates NCAA rules and regulations.

B. Elements of the Contractual Relationship

The essential elements of a contract are straightforward. In its simplest terms, the formation of a contract requires an offer, acceptance, and consideration. These same basic elements can be used to examine the more complex contractual relationship between the student-athlete and the university.

There are numerous documents containing statements that may potentially form a contract between the student-athlete and the university. The primary documents that may establish a contractual relationship between the student-athlete and the university are the National Letter of Intent, the Financial Aid Agreement, and the Student-Athlete Statement. In order to understand the contractual relationship these documents may create, it is important to understand the role each plays.

The National Letter of Intent program is administered by the Collegiate Commissioners Association. The purpose of the National Letter of Intent program is to provide certainty in the recruiting process. Participating institutions agree to provide a prospective student-athlete, who is admitted to the university and is eligible for financial aid under NCAA rules, athletic aid for one academic year in exchange for the prospect’s agreement to attend the university for that academic year. In addition, participating universities agree to not recruit any prospective student-athlete who has signed a National Letter of Intent with another university.

Under the National Letter of Intent program, the university’s athletic director sends a written offer to the prospective student-athlete, offering

---

49. Nestel, supra note 30, at 1404.
50. Davis, supra note 36, at 165.
51. Id.
52. Moorman & Hums, supra note 8, at 165.
53. Cozzillio, supra note 27, at 1290-91.
55. Id.
56. Id.
57. Id.
a "scholarship in exchange for the student-athlete's commitment to attend the institution and participate in intercollegiate athletics." The National Letter of Intent must first be executed by the school's athletic director or authorized representative and, then, by the prospective student-athlete and the student's parent. After executing the National Letter of Intent, the prospective student-athlete is committed to the university, generally, but not to a particular program. In addition, the prospective student-athlete is only allowed to sign one National Letter of Intent.

The National Letter of Intent contains a penalty if the prospective student-athlete does not attend the named institution, but rather attends another participating university. The penalty is that the student-athlete cannot represent another institution in intercollegiate athletics competition until the student-athlete has completed two full academic years at the other institution. Further, the student-athlete is charged with the loss of two seasons of athletics eligibility in all sports. However, the student-athlete can receive a qualified release from the original university, thereby losing only one season of eligibility. Additionally, there are several actions that nullify the National Letter of Intent. A few activities that nullify the National Letter of Intent include: active duty in the armed forces for eighteen months, failure to attend any university for a year, and if the student-athlete's sport is discontinued at the institution named on the Letter.

The second important document is the Financial Aid Agreement. Before signing the National Letter of Intent, the student-athlete must have the Financial Aid Agreement in his/her possession. The Financial Aid Agreement is the offer from the university to pay for the student-athlete's tuition, fees, room, board, and books. The wording of the Financial Aid Agreement is at the discretion of each individual univer-

58. Cozzillio, supra note 27, at 1290.
60. Id.
61. Id.
62. Id.
63. Id.
64. Id.
65. Id.
69. Davis, supra note 32, at 772.
Typically, the Financial Aid Agreement contains a list of the terms and conditions of the award, as well as the amount and duration. These terms and conditions require the student-athlete to comply with institution, conference, and NCAA rules. Furthermore, the student-athlete promises to remain academically eligible and to participate in the institution's athletic program. The Financial Aid Agreement is renewable on an annual basis, for a maximum of five years. However, the university may withdraw the award if the student-athlete fails to comply with the conditions set forth the agreement.

The third material document is the Student-Athlete Statement. Prior to a student-athlete being able to compete each year, he/she must sign the Student-Athlete Statement. The athletic director or a designee administers the Student-Athlete Statement. The Statement verifies that to the best of the student-athlete's knowledge, the athletic department's conduct, as well as their own actions, are in compliance with the appropriate NCAA, conference, and university rules. The Student-Athlete Statement includes a summary of NCAA regulations regarding the student-athlete's eligibility, recruitment, financial aid, and amateur status. Finally, the Student-Athlete Statement demands that a student-athlete consent to drug testing. If the student-athlete refuses to sign the Student-Athlete Statement, they are ineligible to participate in NCAA competition.

The National Letter of Intent, the Financial Aid Agreement, and the Student-Athlete Statement, taken together, are an "express contract that specifically delineates the student-athlete's contractual obligations." The language of these documents clearly indicates that the relationship between the university and a student-athlete is more than an "academic gift." These documents contain promises that provide consideration

70. Johnson, supra note 68, at 115.
71. Davis, supra note 32, at 771-72.
72. Davis, supra note 36, at 166.
73. Davis, supra note 32, at 772.
74. Id.
75. Id.
76. Student-Athlete Statement -- Division I, NCAA, Academic Year 1998-99.
78. Id.
79. Student-Athlete Statement, supra note 78.
80. Id.
81. Id.
82. Davis, supra note 32, at 771-73.
83. Davis, supra note 36, at 165.
for the agreement.\textsuperscript{84} The student-athlete, in prior possession of the Financial Aid Agreement, promises to attend a university when he signs a National Letter of Intent.\textsuperscript{85} In exchange for this commitment, the university promises to provide the student financial assistance.\textsuperscript{86} In its simplest terms, the relationship between the university and a student-athlete satisfies the requirements of offer, acceptance, and consideration.

C. Contract Formation

In order to form the contract between the student-athlete and the university, it is essential that there is mutual assent and that the parties intend to be legally bound to the agreement.\textsuperscript{87} The key issue is whether each party to the agreement manifests an intent to be legally bound by their promises.\textsuperscript{88} Intent is an important element in the contract formation because the entire transaction may be aborted if either party, expressly or implicitly, manifests intent not to be bound by their apparent promises.\textsuperscript{89} A contract will not be enforced if the parties intend not to be bound or held legally accountable for failure to satisfy their promises.\textsuperscript{90} Thus, further analysis is necessary to examine the intent of the student-athlete when entering into a contractual agreement with a university.

The student-athlete's intent is measured by a reasonable person's interpretation of the other party's representation.\textsuperscript{91} The recruiting process by which a prospective student-athlete receives a National Letter of Intent offer reflects the serious nature of the prospect's intent to be bound by the agreement. Recruiting is an aggressive process where prospective student-athletes compete for scholarships and athletic departments spend millions of dollars traveling the country scouting athletic talent.\textsuperscript{92}

Another factor used in determining whether the parties manifested their intent to be bound by the contract is if the document is sufficiently definite and certain to permit a court to apply an appropriate remedy.\textsuperscript{93} Here, the National Letter of Intent reflects a final, formal document that

\begin{footnotes}
\textsuperscript{84} Davis, supra note 32, at 771.
\textsuperscript{85} Id.
\textsuperscript{86} Id.
\textsuperscript{87} Cozzillio, supra note 27, at 1293.
\textsuperscript{88} Id. at 1294.
\textsuperscript{89} Id. at 1293.
\textsuperscript{90} Id. at 1294.
\textsuperscript{91} Id.
\textsuperscript{92} Kimberly Sweet, U. Nebraska: University Funding Essence of Athletic Success, Nebraska Staff Says, U-Wire, Jan. 24, 2000.
\textsuperscript{93} Gordon D. Schaber & Claude D. Rohwer, Contracts, 1, 12 (3d ed. 1990).
\end{footnotes}
is a reflection of the parties' desire to engage in a comprehensive agree-
ment.\textsuperscript{94} The National Letter of Intent, along with the Financial Aid
Agreement and the Student-Athlete Statement, represent all the mate-
rial terms of the agreement, leaving no room for judicial "gap-filling."\textsuperscript{95}
Therefore, these documents stand as a clear reflection of the student-
athlete's serious intent to be bound by their commitment to the univer-
sity in exchange for the financial aid.

\textbf{D. Potential Problems}

Even though it appears that a contract exists between student-athletes
and universities, it could be argued that the agreement represents an
adhesion contract.\textsuperscript{96} The NCAA rules prescribe that member institu-
tions administer documents that are uniform.\textsuperscript{97} For example, Article
3.2.4.5 of the NCAA Constitution states that the Student-Athlete State-
ment "shall [be] administer[ed] annually, on a form prescribed by the
Management Council."\textsuperscript{98} Adhesion contracts are contracts that are offered as "take-it-or-leave-it" propositions.\textsuperscript{99} General contract law indi-
cates that adhesion contracts are looked at with disfavor when there is a
gross inequity in bargaining power between parties to the contract.\textsuperscript{100}
However, many courts have held that adhesion contracts are enforceable
absent a finding of unfairness or unconscionability.\textsuperscript{101} Assuming an indi-
vidual voluntarily enters into a standardized contract (i.e., not procured
by fraud or unconscionability), courts will not invalidate the contract and
will uphold the doctrine of freedom of contract.\textsuperscript{102}

Although student-athletes are recruited by numerous universities
and retain a considerable power to choose what university to attend, the
contract documents at each university are the same.\textsuperscript{103} However, the student-athlete does not agree to any specific clauses that are so shock-

\begin{itemize}
\item \textsuperscript{94} Cozzillio, \textit{supra} note 27, at 1305.
\item \textsuperscript{95} Id. at 1305-06.
\item \textsuperscript{96} Mark A. Conrad, \textit{Letters of Intent and Scholarships, Sport Law for Sport Managers, in
\item \textsuperscript{97} \textit{National Collegiate Athletic Association, 2000-01 NCAA Division I Manual}, art. 3.2.4.5 & art. 13.02.9 (2000).
\item \textsuperscript{98} Id.
\item \textsuperscript{99} James V. Jordan & Judith B. Gitterman, \textit{Franchise Agreements: Contracts of Adhe-
\item \textsuperscript{100} Conrad, \textit{supra} note 96, at 227.
\item \textsuperscript{101} Jordan & Gitterman, \textit{supra} note 99, at 1.
\item \textsuperscript{102} Jonathan E. Breckenridge, \textit{Bargaining Unfairness and Agreements to Arbitrate: Ju-
\item \textsuperscript{103} Id.
\end{itemize}
ingly unfair that a court would decide against enforcement. Requiring
student-athletes to maintain a minimum level of academic standing, not
accept extra benefits from sports agents to restrain from using illegal
drugs, and to avoid gambling on intercollegiate athletic competition are
not unconscionable expectations. Furthermore, prospective student-ath-
letes have alternatives to intercollegiate athletics. An increasing num-
ber of prospective student-athletes are skipping collegiate athletics
altogether, choosing to turn professional after high school. Thus, ap-
plying the concept of adhesion contracts to the student-athlete/university
relationship may be difficult.

A second potential problem in the contractual agreement between
student-athletes and universities is the possible incapacity of the athlete
to enter into a binding contract. Since most prospective student-ath-
letes sign the National Letter of Intent during their senior year of high
school, it is possible that they will only be seventeen and are therefore
considered a minor in most jurisdictions. Thus, the question arises if
the contract becomes voidable due to the student-athlete’s lack of
capacity. The National Letter of Intent requires that an adult party (i.e., parent
or guardian) co-sign with the student-athlete in an attempt to ensure that
the agreement will be enforceable. Generally, an adult co-signer is
liable for damages when a minor breaches the contract. The use of
the co-signature by an adult allows the National Letter of Intent to exist
as a viable contract even though the student-athlete may still be under
the age of majority. In addition, most student-athletes will reach the
age of majority when they attend the university and will then implicitly
or expressly ratify the agreement, removing the capacity problem. Fur-
thermore, the Student-Athlete Statement, which contains many key
promises, is not signed until the student-athlete has enrolled at the insti-
tution and, most likely, has reached the age of majority.

105. Id.
106. Cozzillio, supra note 27, at 1325.
107. Id.
108. Conrad, supra note 96, at 228; see also, Cozzillio, supra note 27, at 1326.
109. Id. at 226.
110. Cozzillio, supra note 27, at 1326.
111. Id.
112. Id.
III. The University's Claim

Since a breach of contract action is available to the university, it is important to analyze what type of claim the university could bring against the student-athlete.113 When a party who owes a duty under the contract fails to perform that duty, that party has breached the contract.114 The basic remedy for a breach of contract action involves the awarding of damages to compensate the injured party.115

In their contract with the university, student-athletes make several specific promises. Included in the Letter of Intent, Financial Aid Agreement, and the Student-Athlete Statement are specific clauses where the student-athlete promises to abide by NCAA, conference, and institution rules. The Student-Athlete Statement incorporates Articles 10 (Ethical Conduct), 12 (Amateurism), 13 (Recruiting), 14 (Eligibility), 15 (Financial Aid), and 16 (Awards and Benefits) into the agreement.116 For example, Bylaw 12.3 of the NCAA Division I Manual is included in the Student-Athlete Statement.117 The Bylaw states that student-athletes are not eligible for a sport if they have ever accepted money, transportation, or other benefits from an agent or agreed to have an agent market the student-athlete's athletic ability or reputation in that sport.118 This rule, barring athletes from receiving extra benefits has been in existence for at least fifteen years, and student-athletes are well aware of its existence.119

Consider a situation where a high profile student-athlete accepts extra benefits (i.e., money, gifts) from a sports agent placing the unsuspecting university at risk for NCAA violations, financial penalties, and investigative costs. After a lengthy investigation, the university incurs several NCAA penalties, including the return of revenues generated from NCAA Championship competition. Subsequently, the student-athlete who violated NCAA rules has become a professional athlete accepting a multi-million dollar contract. This scenario could lead a university to bring a contract action against its former student-athlete. The university could bring a breach of contract action for monetary damages to recover for the economic harm incurred, and more importantly,
to establish a precedent of holding student-athletes accountable for their willful misconduct. However, some state statutes bar claims against student-athletes for violations of collegiate athletic association rules. In Texas, a cause of action cannot be brought by a regional athletic association if, at the time of the violation, the defendant was a student at a member institution of the regional athletic association.

Additionally, a student may raise an antitrust defense to a breach of contract claim. Over the last thirty years, student-athletes have brought several suits challenging the draft, agent, and compensation bylaws as violations of antitrust law. Courts have rejected all of these challenges. Courts have deferred to the NCAA's rules and principles of amateurism and have concluded that such rules fail to constitute unlawful restraints of trade. Thus, based on the existing precedent, it is unlikely that an antitrust defense would be successful.

The university could also bring a claim based on fraud due to the intentional misrepresentations made by a student-athlete. Fraud in the inducement claim relates to false representations made prior to the inception of the contract. It occurs when a party to a contract is induced to enter into that contract by the fraud of the other party. Because fraud neglects the essential element of meeting of the minds, the defrauded party has the right to void the contract and/or seek damages.

A student-athlete may fraudulently represent his eligibility to the university when signing the student-athlete statement each year prior to competition. In this situation, the university would have to show that the student-athlete knowingly made a false representation of a material fact to the university that the institution relied upon to its damage. Since the contract documents contain specific clauses that relate to student-athlete eligibility, particularly in regard to their involvement with agents,
the university could file a claim based on fraud to recover damages for economic harm.

Damages from fraud may not be predicated on speculation and must be a proximate consequence of the fraud. Generally, damages for fraud are in an amount that will compensate the plaintiff for the loss caused by the fraud. In a situation where an athlete receives extra benefits from a sports agent, a university should not have any difficulty showing that their economic harm was the proximate consequence of the student-athlete’s fraudulent representation. Thus, the university should be able to recover damages to offset its financial injury.

IV. POTENTIAL CONSEQUENCES OF UNIVERSITY LEGAL ACTION

While a valid contract claim is probably available to a university, the question remains whether it is the most practical solution to the problem. In theory, pursuing a contract action against a former or current student-athlete sounds like a good idea. However, there are numerous ramifications that may occur if a university brings suit against a student-athlete.

If a university takes legal action against a student-athlete who has caused harm to its reputation and economic status, it could have a negative effect on the university's reputation. Recently, universities have received a substantial amount of criticism due to low graduation rates and the perceived exploitation of student-athletes. Universities continue to claim that their primary interest is the education of student-athletes, rather than winning championships and generating revenue. Universities assert that intercollegiate athletics is an incidental and subordinate activity to the essential task of providing a quality education. Legal action against a student-athlete could make a philosophical statement that universities are more concerned with operating a business than educating their student-athletes. Therefore, it is con-

130. Id. at §61.
131. Moorman & Hums, supra note 8, at 169.
133. Johnson, supra note 68, at 106.
134. Id.
135. Moorman & Hums, supra note 8, at 170-71.
ceivable to expect a negative media and public reaction to a university suing a student-athlete.\textsuperscript{136}

This negative reaction to university legal action could also have a negative effect on fundraising.\textsuperscript{137} While success in athletics obviously makes institutions' fundraising efforts easier, legal action against student-athletes could have the opposite effect. Alumni and other donors may be less inclined to donate money to a university whose interests may seem to conflict with that of their mission.\textsuperscript{138}

Another potential consequence of university legal action is the detrimental effect it may have on future recruiting. Today, the Internet has a major impact on the recruiting of prospective student-athletes.\textsuperscript{139} High school recruits are well informed about the universities who are recruiting them.\textsuperscript{140} Trying to convince a prospective student to attend a university that has previously brought suit against a student-athlete would be a difficult obstacle to overcome.\textsuperscript{141}

Finally, using the legal system to hold student-athletes accountable for their action would be extremely costly.\textsuperscript{142} Retaining a private law firm to handle the university's case would be very expensive.\textsuperscript{143} Due to escalating court costs and legal fees, compounded with the long delays that result from overcrowded court dockets, the use of the legal system may not be very cost effective.\textsuperscript{144} Furthering the problem is the fact that many student-athletes come from impoverished backgrounds and probably would not be able to pay the damages the university was awarded.\textsuperscript{145}

V. Contractual Analysis of a Coach's Relationship to a University

The problem with individuals disregarding NCAA rules is not limited to student-athletes and agents. Coaches with a win-at-all-costs attitude place their own career above the future of the university, often leading

\textsuperscript{136} Id. at 171.
\textsuperscript{137} Id.
\textsuperscript{138} Id.
\textsuperscript{140} Moorman & Hums, supra note 8, at 172.
\textsuperscript{141} Id. at 172.
\textsuperscript{142} Id. at 173.
\textsuperscript{143} Id.
\textsuperscript{145} Hal Bock, Report: Two-thirds of Athletes Break NCAA Rules, STATE TIMES/MORNING ADVOC. (Baton Rouge), Nov. 9, 1996, at 2D.
Coaches' contracts have escalated in value with several college football and basketball coaches making more than one million dollars. However, regardless of the pressure placed on coaches by fans, alumni, and boosters, this type of conduct is inexcusable for a coach who knowingly disregards NCAA rules.

The contractual relationship between a coach and a university is much simpler than that of a student-athlete. Coaches' contracts, like many employment agreements, contain the usual clauses identifying the nature, duration, and compensation to be paid. However, one important aspect of coaches' contracts is the inclusion of university, conference, and NCAA rules. The contract of Clem Haskins, the former University of Minnesota men's basketball coach who was involved in the university's recent academic fraud scandal, included the following compliance responsibilities:

Section 1.4 Compliance. Throughout the term of this Agreement, Haskins shall comply with the current and hereafter enacted or promulgated laws, policies, rules and regulations of and governing the University and its employees and the current and hereafter enacted or promulgated constitution, bylaws, and rules and regulations of the National Collegiate Athletic Association ("NCAA"), the Big Ten Conference ("Big Ten"), and any other conference or organization with which the University becomes associated or which affects MICA (collectively, the "Governing Association"). Haskins shall attempt to have all assistant men's basketball coaches and any other University employees for whom Haskins is administratively responsible comply with the foregoing laws, policies, rules and regulations.

Accordingly, if a coach violates any rule governing recruiting or player eligibility, the coach may not only be subject to NCAA penalties, but also to a possible breach of contract action by the university.

Coaches' contracts will almost always contain some type of "termination for just cause" provision. The just cause provision allows the uni-

---

146. Johnson, supra note 68, at 107.
148. Id. at 225.
149. Id.
152. Selvaggi, supra note 147, at 226-27.
153. Greenberg, supra note 150, at 265.
versity to terminate, suspend salary payments, or take other disciplinary action if there is a determination by the university that the coach has committed a major NCAA violation.\textsuperscript{154} Just cause usually means a major violation by the head coach, a major violation by a member of the coaching staff that the head coach knew about, the conviction of a felony by the head coach, a substantial failure to perform any of the duties which are reasonable related to his duties, and multiple secondary violations.\textsuperscript{155} In regards to just cause, the determination of whether a major or secondary rule violation occurred usually requires a finding of the governing association rather than the university.\textsuperscript{156}

A coach’s contract may also give the university the right to terminate the contract without just cause.\textsuperscript{157} Normally, the contract will have a built-in provision for premature termination, without cause, outlining the amount and method of payment.\textsuperscript{158} However, some coaches’ contracts also contain a provision that allows a coach to be compensated even if they are fired with just cause.\textsuperscript{159} For example, Clem Haskins’ contract contained a provision that paid him $423,000.00 in deferred compensation even if he was terminated with just cause.\textsuperscript{160}

One possible solution to hold coaches accountable for their violations of NCAA rules is for the university to bring a breach of contract suit.\textsuperscript{161} The university could sue a coach for expectation damages.\textsuperscript{162} Expectation damages, including consequential damages, would include all revenue lost as a result of the NCAA sanctions imposed due to the coach’s violation of rules.\textsuperscript{163} In order for the university to receive consequential damages, the university must demonstrate: (1) the damages were caused by the coach’s breach of contract; (2) the amount of damages with a reasonable degree of certainty, and (3) the damages sustained were within the contemplation of the parties at the time of the agreement.\textsuperscript{164}

\textsuperscript{154} Id.

\textsuperscript{155} Id. at 265-67; Haskins’ Contract, supra note 151.

\textsuperscript{156} Haskins’ Contract, supra note 151.

\textsuperscript{157} Greenberg, supra note 150, at 272.

\textsuperscript{158} Id.

\textsuperscript{159} Dennis Brackin & Randy Furst, Haskins Covered by Strong Contract, STAR TRIB. (Minneapolis), May 23, 1999, at 1B.

\textsuperscript{160} Id.

\textsuperscript{161} Selvaggi, supra note 147, at 228.

\textsuperscript{162} Id.

\textsuperscript{163} Id.

\textsuperscript{164} Id. at 228-33.
It is likely that a university would be able to fulfill this burden of proof. The university should be able to show that damages were caused by the coach’s violation of NCAA rules through the investigative report. Secondly, the university should be able to prove damages with certainty by showing its lost television revenue or an inability to participate in post-season play. Finally, it would seem obvious that both the university and the coach could reasonably foresee that a violation of NCAA rules would lead to penalties. Thus, a university may be able to protect its economic interest by recovering consequential damages.

If a school would fail to establish the existence of damages, it still may obtain a judgment for nominal damages. Nominal damages represent a sum that is fixed without regard to the amount of harm. Although nominal damages may not fully compensate the university for its financial harm, it will establish a precedent that coaches who violate NCAA rules will be held accountable for their actions.

However, some universities could encounter a potential problem when pursuing a contract action against a coach. Some states have statutes that bar causes of action brought by regional collegiate athletic associations when an employee (i.e., coach) of a member institution violates a rule. Thus, in these locations, universities could not rely on bringing suit against coaches.

VI. ALTERNATIVES TO A BREACH OF CONTRACT SUIT FOR HOLDING COACHES AND STUDENT-ATHLETES ACCOUNTABLE

Since pursuing breach of contract actions against student-athletes and coaches is a complex situation with various unknown consequences, it is important to examine alternative possibilities that may address the problem. The NCAA, coaches, legislators, and educators all have contributed their recommendations to reform the current state of college athletics. Reform proposals include the use of state athlete-agent legislation, a change in recruiting rules, paying student-athletes, restructur-
ing coaching contracts, and a ban on legal gambling on college athletics.\textsuperscript{174} Thus, the following section will briefly discuss alternative means of preventing harm to the universities' economic interests.

\textbf{A. Athlete-Agent Legislation}

The problems between athletes, agents, and universities have been around for quite some time, and it does not appear that they will disappear anytime soon. However, in an effort to address the problems created by the unsavory practices of agents, many states have adopted athlete-agent legislation.\textsuperscript{175} Athlete-agent legislation has been implemented to help protect universities' economic interests. Many legislators believe that the legislation would help reduce or eliminate the chances of universities being penalized by the NCAA and suffering financially.\textsuperscript{176}

Currently there are twenty-eight states that have adopted some type of athlete-agent legislation.\textsuperscript{177} Penalties imposed upon agents for violating state athlete-agent legislation range from civil fines to criminal felony charges.\textsuperscript{178} In addition, some states also impose civil and/or criminal liability on student-athletes. Civil remedies include restoring the injured party to their previous position and compensating the victim for any harm incurred.\textsuperscript{179} Some states have expanded the scope of recovering damages to include lost revenue from media coverage, lost revenue from the forfeiture of athletic competition, and lost revenue from a ban of post-season play.\textsuperscript{180} Agents can also be subject to criminal penalties. In Florida, for example, an agent who fails to comply with the state's registration requirements or engages in unlicensed agent activity is subject to a third degree felony which could lead to imprisonment not exceeding five years and/or a fine of up to $5,000.00.\textsuperscript{181}


\textsuperscript{175} Moorman & Hums, \textit{supra} note 8, at 172.


\textsuperscript{177} \textit{Athlete Agent Laws By State}, available at http://www.ncaa.org/agents_amateurism/agents/ (last visited Mar. 25, 2000).

\textsuperscript{178} Moorman & Hums, \textit{supra} note 8, at 168.


\textsuperscript{180} Moorman & Hums, \textit{supra} note 8, at 168.

\textsuperscript{181} Hanson, \textit{supra} note 179, at 1079.
Student-athletes can also be subject to liability for violating legislation. For example, consider Auburn University basketball player Chris Porter’s recent involvement with a sports agent. Porter admitted accepting $2,500.00 from an agent and was subsequently declared ineligible to participate in NCAA competition. However, under Alabama’s agent regulation law, it is possible that Porter could face further legal action. Alabama has a sports agent regulatory law that makes a student-athlete who is convicted of a violation subject to a possible fine, community service, or a damage lawsuit. The Alabama law provides that student-athletes who enter into contracts with agents are subject to the following penalty: “A student-athlete who negotiates for or enters into an agent or professional sports services contract without giving the required notice is guilty of a Class A misdemeanor and is subject to a fine of not more than $1,000, and shall perform a minimum of 70 hours of community service.”

Furthermore, Alabama law also provides that student-athletes who accept extra “benefits without giving the required notice [are] liable to the institution for actual damages that result from the loss of the student’s eligibility.”

Several other states have taken an aggressive approach to dealing with illegal agent/athlete activity and other states are currently considering legislation similar to Alabama. As a result, some universities have a specific statutory remedy, an alternative to a breach of contract action, to hold student-athletes accountable. Furthermore, athlete-agent legislation can also serve to protect naïve student-athletes, who are lured by agents with the promises of wealth and glory. Therefore, the use of athlete-agent legislation is an important step in providing a safeguard to both student-athletes and universities.

182. Darrell Williams, Porter Says Agent Gave Him Money; Suspended for Now, He Hopes; For Reinstatement from NCAAs, TIMES-PICAYUNE (New Orleans), Feb. 29, 2000, at E1.
183. Id.
184. Id.
186. Id.
187. Id.
188. Id.
190. Moorman & Hums, supra note 8, at 169.
191. Hanson, supra note 179, at 1070.
192. Id. at 1082-83.
B. Changes in NCAA Recruiting Rules

The NCAA has proposed a change in the summer recruiting calendar for men's basketball in the hopes of decreasing the chances of students receiving extra benefits from AAU coaches, summer camp directors, and agents. Recently, many violations involving prospective student-athletes receiving extra benefits from individuals with ties to agents prior to enrolling in college have caused a great deal of disruption. For example, St. John's University point guard, Erick Barkley, was suspended twice during the season for receiving extra benefits. His relationship with a sports agent is still the focus of a NCAA investigation. Another example includes UCLA forward, JaRon Rush, who was suspended for receiving $6,325.00 from an individual with connections to agents and a shoe company.

The summer recruiting period was used because it is more cost-effective for college coaches to evaluate the top high school prospects in a few summer camps than to travel the country to see each player individually during the season. However, this reliance on summer recruiting has led to an increase in NCAA violations. The NCAA is hoping the changes in summer recruiting will help reduce the unwelcome influences faced by student-athletes. Although this change could negatively affect small universities with limited budgets who rely on the summer to recruit, it may alleviate some of the problems of athletes receiving extra benefits.

C. Restructuring Coaches Contracts

Since universities may not desire to go to litigation as a result of having to "air their dirty laundry" in a public proceeding, the need to

194. Scott M. Reid, Points of Contention: The NCAA is Taking a Hard Look at Potentially Serious Problems That Plagued Men's Basketball This Season, THE ORANGE COUNTY REGISTER (Orange County, CA), Mar. 31, 2000, at D10.
195. Id.
196. Id.
197. Id.
199. Id.
201. Goe, supra note 193, at C7.
restructure coaches' contracts is evident. Coaches' contracts that allow a coach to be paid even if they are terminated with "just cause" promote an environment that tolerates unethical behavior. Removing this type of clause from a coach's contract will send the message that coaches are going to be held accountable for their role in NCAA violations.

D. Ban on Legal Gambling

Student-athlete involvement in gambling can not only threaten the integrity of the game, but can also have a negative financial effect on universities through investigation costs and financial sanctions.

A [1996] study by the University of Cincinnati of 648 Division I Intercollegiate men's basketball and football respondents indicated that 25.5% had gambled money on other college sporting events, 3.7% had gambled money on a game in which they had played, and 0.5% received money from a gambler for not playing well in a game.

These results have caused the NCAA and its member institutions to be concerned with the integrity of intercollegiate athletics. Currently, legislation is being proposed that would eliminate legal gambling in Las Vegas. The NCAA believes that this proposed legislation will aid in preserving the integrity of college sporting events and assist in protecting student-athletes from pressures to influence the outcome of a game or contest.

However, the gambling industry will not give up the approximately $1 billion that is wagered on college sports each year in Las Vegas without a fight. Some people believe that the elimination of legal betting will only make the sports betting problem worse by putting it underground. Nevertheless, at worst, a ban on legal gambling can only help increase the integrity of the game, increase the likelihood that student-

203. Greenberg, supra note 150, at 265.
206. Id.
207. Gambling/Sports Wagering, supra note 204.
209. Steve Tetreault, Gaming Has NCAA in Retreat, Las Vegas R. J., Nov. 24, 1999, at 1A.
athletes will not bet on games, and help out the public image of an organization that desperately needs support.

VII. CONCLUSION

The relationship between a university and a student-athlete represents a binding contract. Universities have access to a valid legal claim, a means to recovering financial losses, and an important mechanism to establish a precedent of holding unethical student-athletes accountable. However, filing a lawsuit against a student-athlete also comes with many possible consequences. Institutions must realize that there are many political, social, and public relations issues that may negatively affect the university if it decides to pursue a contract action against a student-athlete. In addition to a contract claim, universities have several alternatives that may allow them to hold student-athletes accountable and to maintain a level of institutional control.

The time has come to treat student-athletes and coaches as adults and require a minimum level of accountability. One corrupt student-athlete or coach can set an athletic program back for years and unquestionably damage the reputation and finances of the university for several years. However, universities do not have to sit back idly while student-athletes and coaches run afoul of NCAA regulations. The choice to pursue a contract action resides with the university. Nonetheless, universities must take further steps to protect themselves from the unethical behavior of student-athletes, agents, and coaches.

Kevin Stangel