

The Right of Educational Institutions to Withhold or Revoke Academic Degrees

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I. **Introduction**¹ One of the most important functions of an educational institution is the awarding of an academic degree.² An academic degree is an institution’s “certification to the world at large of the recipient’s educational achievement and the fulfillment of the institution’s standards.”³ Employers rely upon the holding of a degree in making employment decisions. The prestige of the institution may vicariously extend to the graduate.⁴

¹This outline draws heavily on a paper Donna Gurley, Associate General Counsel, University of Mississippi, and the author are preparing to submit for peer review and publication. The author wishes to express appreciation to Ms. Gurley for her contributions to this outline.

²The term “degree” is used when discussing an academic rank conferred by a college or university after examination or completion of a course of study; the term “diploma” is used when discussing a certificate awarded by a secondary educational institution. *See* THE NEW OXFORD AMERICAN DICTIONARY (2001) at 449 & 482.

³*Waliga v. Board of Trustees of Kent State Univ.*, 488 N.E.2d 850, 852 (Ohio 1986).

⁴*See generally*, 3 Rapp, EDUCATION LAW § 8.06[1].

A degree may be a prerequisite for licensing in the professions.⁵ Because of the importance of a degree, educational institutions have the right and responsibility to set standards for its award.⁶ Standards may include not only completion of course work, but compliance with conduct standards and fulfillment of financial obligations to the institution.⁷

Whether a student conforms to standards required for a degree is a determination to be made by the educational institution.⁸ What happens, however, when a student has completed all course and academic requirements but violates school policies or rules by engaging in acts of misconduct or academic dishonesty before the degree is awarded? Can the school refuse to award the degree? What if the institution discovers after conferring the degree that the student received credit for courses he or she did not take or engaged in some other act of academic dishonesty or non-academic misconduct? What can and should the institution do? What due process rights does a student at a public institution hold? What protections exist for a student at a private institution? Is there a difference in procedural requirements for withholding a degree as opposed to revoking one already granted?

⁵*Id.*

⁶*See Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (describing the “four essentials freedoms” of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”)

⁷*See generally*, Rapp, *supra* n.4 at §8.06[6][d][I].

⁸*See Susam M. v. New York Law Sch.*, 76 N.Y.2d 241, 245-46, 556 N.E.2d 1104 (1990) (“[Academic] determinations play a legitimate and important role in the academic setting since it is by determining that a student’s academic performance satisfies the standards set by the institution, and ultimately, by conferring a diploma upon a student who satisfied the institution’s course of study, that the institution, in effect, certifies to society that the student possesses the knowledge and skills required by the chosen discipline.”).

This outline examines whether public and private institutions of higher learning have the authority to withhold academic degrees already earned or to revoke academic degrees already conferred for acts of academic dishonesty or for student misconduct; discusses the procedural safeguards required to ensure fairness in the process; and analyzes the deference (or lack thereof) given to educational institutions in these matters by the courts.

II. Withholding or Revoking a Degree for Failure to Meet Academic Requirements or for Acts of Academic Dishonesty.

Although there has been relatively little judicial attention paid to the matter,⁹ both public and private institutions generally have authority to withhold and revoke improperly awarded degrees.¹⁰ This authority exists whenever “good cause such as fraud, deceit, or error is shown.”¹¹

A. Withholding a Degree

A student who enrolls in an institution of higher learning, pays all fees, completes all academic requirements in a prescribed course of study, and abides by the institution’s rules and regulations is generally entitled to a degree.¹² Courts grant substantial discretion and great deference to faculties and governing bodies of colleges and universities in evaluating students

⁹The Sixth Circuit Court of Appeals noted in *Crook v. Baker*, 813 F. 2d 88, 91 (6th Cir. 1987), the scarcity of case law on this subject, as did Ralph D. Mawdsley, *Judicial Deference: A Doctrine Misapplied to Degree Revocations*, 71 EDUC. L. REP. 1043, 1044 (1992).

¹⁰*See generally*, William A. Kaplin & Barbara A. Lee, THE LAW OF HIGHER EDUCATION (3rd ed.) at 474-77. Cases and authorities on this point are collected in Lori J. Henkel, Annot., *College’s Power to Revoke Degree*, 57 A.L.R. 4th 1243 (1987 & Supp. 2004).

¹¹*Waliga*, 488 N.E.2d at 852; *see also*, *Crook*, 813 F.2d at 93.

¹²*See, e.g.*, *Johnson v. Lincoln Christian College*, 501 N.E.2d 1380, 1384 (Ill. App. Ct. 1986); *Anthony v. Syracuse Univ.*, 224 A.D. 487 (N.Y. A.D. 1928); 14A C.J.S. *Colleges and Universities* § 41 (2003).

and in determining whether a student has performed all the conditions prescribed by the institution.¹³ There are occasions, however, when a student completes all academic requirements, but the college or university refuses to grant a degree.

Academic institutions generally withhold a degree for three reasons: First, for academic problems, such as failing grades or academic dishonesty; second, for non-academic problems, such as failure to pay tuition or fees; and, third, for social misconduct that the college or university disapproves.¹⁴

Courts have upheld the right of universities in both the public and private sector to withhold academic degrees because students failed to meet academic requirements or engaged in acts of academic dishonesty. For example, the Superior Court of New Jersey in *Napolitano v. Trustees of Princeton University*¹⁵ addressed the withholding of a student's degree for one year because of plagiarism. The court found the charge of plagiarism valid and the withholding of the degree a viable punishment for the act of academic dishonesty. The court interpreted the University's regulation allowing suspension of a student under these circumstances to include the power to withhold degrees and held that "a withheld degree . . . is a less severe variation of suspension."¹⁶ The court noted that withholding the degree is imposed only upon second semester seniors. It permits the student to finish his or her academic requirements and wait the prescribed period to receive the degree, rather than requiring the student to lose tuition and repeat

¹³See *Bruner v. Petersen*, 944 P.2d 43, 48 (Alaska 1997) ("In matters of academic merit, curriculum, and advancement, the courts afford university faculty and administrators substantial discretion."); see generally, 15A AM. JUR.2D *Colleges and Universities* § 29 (2003).

¹⁴William H. Sullivan, *The College or University Power to Withhold Diplomas*, 15 J.C.&U.L. 335, 337 (1989); 14A C.J.S. *Colleges and Universities*, § 41 (2003).

¹⁵453 A.2d 263 (N.J. 1982).

¹⁶*Id.* at 265. The court noted that excluding plaintiff's case, Princeton had withheld 20 degrees for disciplinary reasons since the 1972-73 academic year. *Id.*

the last semester during the following academic year. In addition, the court found there exists “the necessity for independence of a university in dealing with the academic failures, transgressions or problems of a student.”¹⁷

Deferring to the university’s discretion in awarding or withholding an academic degree, the court in *Cieboter v. O’Connell*¹⁸ refused to force a university to consider a dissertation where the student in question had not fulfilled the graduate school’s requirements. The Florida court, like many other courts, held that the University of Florida did not have to consider the dissertation because “[t]hese are determinations which fall peculiarly within the competence of the University officials charged with the responsibility of granting doctorate degrees only to students whom they find to be fully qualified in all respects and for whose competence the University must vouch.”¹⁹

B. Revoking a Degree²⁰

The issue of whether an academic institution has the authority to revoke a former student’s degree was addressed as early as 1334. In *The King v. University of Cambridge*,²¹ the plaintiff sought the restoration of his doctoral degree which the University had rescinded. Although the court granted plaintiff’s writ of mandamus to restore the degree because it had been

¹⁷*Id.* at 273.

¹⁸236 So. 2d 470 (Fla. Dist. Ct. App. 1970).

¹⁹*Id.* at 473.

²⁰For an excellent discussion of the subject, see Robert Gilbert Johnston and Jane D. Oswald, *Academic Dishonesty: Revoking Academic Credentials*, 32 J. MARSHALL L. REV. 67 (1998).

²¹8 Mod. Rep. 148 (1334).

taken from him without a hearing, the court clearly recognized the right of the University to “revoke a degree for a reasonable cause.”²²

One of the earliest cases in the United States discussing the revocation of a degree is *Waliga v. Board of Trustees of Kent State University*.²³ In *Waliga*, the Ohio Supreme Court addressed a single issue: whether the university had authority to revoke a degree it determined had been improperly granted.²⁴ The court began its analysis by noting that Ohio statutes provided that Ohio’s universities had the power to “confer such . . . academic degrees as are customarily conferred by colleges and universities in the United States” and to “do all things necessary for the proper maintenance and successful and continuous operation of such universities.”²⁵

²²*Id.* at 164. For cases in which students have sought a writ of mandamus to force an institution to confer a degree, see Annotation, *Students Right to Compel School Officials to Issue Degree, Diploma, or the Like*, 11 A.L.R.4th 1182 (1982 & 2004).

²³488 N.E. 2d 850 (Ohio 1986).

²⁴*Id.* at 851-52. In its “Syllabus by the Court,” the court noted that the two former Kent State students had “discrepancies” in their official academic records. After an investigation, the university determined that the academic records were incorrect and that the students had not met the necessary requirements to graduate. No mention was made as to whether the students had played a role in falsifying their records. Furthermore, although the syllabus discussed the procedural due process provided to the students by the university, the court noted that it was not asked to decide whether the level of due process provided was sufficient, but only whether the university could revoke a degree previously granted. *Id.*

²⁵*Id.* at 852. Many of the public university degree revocation decisions begin with an analysis of the power granted the university or its governing body by the state constitution or state statutes. See, e.g., *Crook*, 813 F.2d at 92 (“Indeed, the administrative independence granted

The court went on to note that, unless a university has the power to revoke or rescind a previously granted degree, the university is placed in the untenable position of continuing to certify to the public that the former student did, indeed, meet all of the university's degree requirements. The court's reasoning is summarized in one of the most frequently cited paragraphs in degree revocation cases:

Academic degrees are a university's certification to the world at large of the recipient's educational achievement and fulfillment of the institution's standards. To hold that a university may never withdraw a degree, effectively requires the university to continue making a false certification to the public at large of the accomplishment of persons who in fact lack the very qualifications that are certified. Such a holding would undermine public confidence in the integrity of degrees, call academic standards into question, and harm those who rely on the certification which the degree represents.²⁶

In *Crook v. Baker*,²⁷ decided one year later in 1987, the Sixth Circuit Court of Appeals also treated the question of the power to revoke a degree as a clear question of state law. Although the court relied heavily on *Waliga* in analyzing this issue, the Sixth Circuit also pointed out that Michigan universities gain their status under the Michigan state constitution. Because the public universities of Michigan have the authority to administer their programs under the state constitution, such authority implies the right to revoke a degree previously granted:

We conclude that there is nothing in Michigan constitutional, statutory or case law that indicates that the Regents do not have the power to rescind the grant of a degree. Indeed, the administrative independence granted to the University by the Michigan

to the University by the Michigan Constitution in educational matters indicates that the University does have such authority.”).

²⁶*Waliga*, 488 N.E.2d at 852.

²⁷813 F.2d 88 (6th Cir. 1987).

Constitution in educational matters indicates that the University does have such authority.²⁸

To summarize, the authority of an educational institution to withhold or revoke degrees is supported by a logical extension of its conferral power, by contract law, and by the precedential authority of *Napolitano*, *Waliga*, and *Crook*. The procedures that must be followed to afford constitutional or contractual protections to affected students or former students raise a number of different issues that will be discussed in Section IV below.

III. Withholding or Revoking a Degree for Non-academic Reasons.

A. Withholding a Degree

1. Social Misconduct

In addition to holding authority to withhold a degree for academic reasons, colleges and universities also have authority to withhold a degree for social misconduct the institution prohibits. In *Harwood v. Johns Hopkins University*,²⁹ the court dealt with an unusual and tragic circumstance. The University refused to award a degree to Robert J. Harwood, Jr., even though he had completed successfully all academic requirements for graduation, because he shot and killed a fellow student, Rex Chao, on the Hopkins campus on April 10, 1996.

Harwood enrolled at Hopkins in 1992. By the end of the Fall 1995 semester, he had completed all required classes. Harwood was scheduled to receive his degree at the June 1996 commencement exercises. Harwood did not register for classes or pay tuition for the Spring 1996 semester. He lived with his grandmother in Rhode Island during that time but continued to maintain consistent contact with the Hopkins community and even manned a student election table during March of 1996. He visited the campus on numerous occasions, which resulted in a number of complaints of harassment being filed against him by Chao.

Harwood attended a meeting of a student political organization on April 10, 1996. While there, he distributed flyers and spoke out in opposition to the candidacy of Chao for president of

²⁸*Id.* at 92.

²⁹747 A.2d 205 (Md. Ct. Spec. App. 2000).

the organization. Later that evening, while still on campus, Harwood confronted Chao and shot and killed him. Harwood pled guilty to murder in addition to related handgun violations.

On May 15, 1996, the dean of students informed Harwood that his diploma would be withheld pending resolution of his criminal charges. The University based its decision to withhold Harwood's degree on provisions of the Student Handbook, which provided, in pertinent part:

*The university does not guarantee the award of a degree or a certificate of satisfactory completion of any course of study or training program to students enrolled in any instructional or training program. The award of degrees and certificates of satisfactory completion is conditioned upon satisfaction of all current degree and instructional requirements at the time of such award, compliance with the university and divisional regulations, as well as performance meeting bona fide expectations of the faculty.*³⁰ (emphasis added by the court).

After the dean learned of Harwood's guilty plea, she notified him that she was initiating disciplinary proceedings against him, that he could submit any materials he wished her to consider, and that he or his parents could speak with her by telephone. Harwood responded that he was not subject to the jurisdiction of the dean's office because he was no longer a student, that his actions were not punishable under the Undergraduate Student Conduct Code, and that the dean continued to violate the Conduct Code by denying him a hearing.

The dean informed Harwood shortly thereafter that he was expelled from the University and would not be awarded his degree, reiterating that he remained subject to the Conduct Code until the award of his diploma. Harwood appealed the dean's decision within the University; his appeal was denied. On May 1, 1998, Harwood filed a declaratory judgment action seeking the award of his diploma. The University moved for summary judgment. The court concluded that Harwood was subject to the disciplinary action of the University and that the University did not act arbitrarily or capriciously in denying Harwood his degree.

³⁰*Id.* at 207-08.

Harwood appealed. The Maryland Court of Special Appeals affirmed the grant of summary judgment to the University, holding that it had the right to withhold a diploma from a student who has completed all required course work and that it did not act arbitrarily and capriciously in refusing to award Harwood his degree.³¹

In another high profile case involving a prestigious private university, the district court held in *Dinu v. President and Fellows of Harvard College*³² that two Harvard students, suspended by the school's disciplinary board after having been found guilty of stealing money from Harvard Student Agencies, were not entitled to the award of their degrees, even though they had completed all degree requirements prior to the board's disciplinary action. The College relied on language in the HANDBOOK FOR STUDENTS, which stated: "Instances of theft, misappropriation, or unauthorized use of or damage to property or materials not one's own will ordinarily result in disciplinary action, including requirement to withdraw from the College."³³ A disciplinary committee investigated allegations that the students had accepted money for work they had not performed, determined that the students had indeed committed the wrongful act, and recommended to the Administrative Board that the students be required to withdraw from the College for one year. The Board accepted this recommendation. As a result, the students were not permitted to participate in Harvard's June 1999 commencement.

³¹*Id.*; see also, Ben Gose, *Court Upholds Right of a University to Deny Degree to Student Who Killed Another*, CHRON. HIGHER EDUC., March 17, 2000. ("A spokesperson for Hopkins said the University was pleased with the ruling. 'It certainly accomplishes what we were seeking, which was to be able to uphold the principle that a degree from Johns Hopkins says more than just that you completed your courses. It says something about your behavior as a citizen of the university during the time you were here.'")

³²56 F. Supp.2d 129 (D. Mass. 1999).

³³*Id.* at 130 (quoting HANDBOOK FOR STUDENTS at 307).

The students sued, seeking to have the College forced to award them their degrees. They asserted contractually that because they had satisfied the formal requirements for a degree prior to the Board's action, their right to a degree had vested, and the Board was powerless to punish their misconduct by withholding their diplomas. They further argued that since the misconduct in question occurred after they had fulfilled all academic requirements, they had ceased being students and were no longer subject to Harvard's disciplinary jurisdiction.

The court found the students' arguments "fundamentally flawed" and the position of Harvard to be based on "logic that is unassailable."³⁴ The court quoted with approval the following syllogism from Harvard's memorandum in support of its summary judgment motion: "Assume, for example, that a senior completes his course work, learns that he will not graduate with honors, and, in a rage, attacks the chair of his department. Plaintiffs cannot seriously suggest that Harvard would be powerless to enforce its disciplinary r[ules] in that instance."³⁵

In other cases, courts have also upheld the right of educational institutions to withhold a degree for student activity unrelated to academics but contrary to university policy. For example, in *People ex rel. O'Sullivan v. New York Law School*,³⁶ the Law School withheld a student's diploma for an incident involving a protest against the choice of a graduation speaker. The New York Supreme Court stated:

It cannot be that a student having passed all examinations necessary for a degree can, before his graduation, excite disturbance and threaten injury to the school or college without being amendable to some punishment. No course would seem open except to forthwith expel him or refuse his degree. . . . The faculties of educational institutions having power to confer degrees

³⁴*Id.* at 133.

³⁵*Id.*

³⁶22 N.Y.S. 663, 665 (N.Y. Sup. Ct. 1893).

. . . are necessarily vested with a broad discretion as to the persons who shall receive those honors. . . . Any other rule would be subversive of all discipline in the school. . . . We see no reason why the right to discipline is not as great between the final examination and the graduation as before. . . .³⁷

Courts have granted great latitude to religious institutions in withholding diplomas of students who have completed all required course work but have violated some institutional policy or rule.³⁸ In *Lexington Theological Seminary v. Vance*,³⁹ the Kentucky Court of Appeals ruled that the Seminary could deny a Master of Divinity Degree to a student who was an admitted homosexual. The court's decision rested on its finding of a contract between the student and the Seminary arising from the words used in the school catalogue, such as "Christian ministry," "gospel transmitted through the Bible," and "fundamental character." It held that these words constituted contract terms that created "reasonably clear standards" upholding the exclusion of homosexuals based on the institution's Christian ministry.⁴⁰

Similarly, the court in *Carr v. St. John's University*,⁴¹ held that the dismissal of four students, two of whom were married in a civil ceremony and two of whom acted as witnesses, was within the discretion of the University.

³⁷*Id.* at 665.

³⁸*See Sullivan, supra* n.14 at 340.

³⁹596 S.W.2d 11 (Ky. Ct. App. 1979).

⁴⁰*Id.* at 13; *but cf., Johnson v. Lincoln Christian College*, 501 N.E.2d 1380 (Ill. Ct. App. 1986) (holding that student who met all requirements for graduation had valid cause of action for breach of contract when College withheld his degree because there were "claims" that he "might be homosexual.")

⁴¹231 N.Y.S.2d 410 (N.Y. A.D. 1962).

2. Non-payment of Fees

Courts have also upheld the right of colleges and universities to withhold degrees for nonpayment of fees. In *Haug v. Franklin*,⁴² the University of Texas refused to confer a student's law degree on him because he failed to pay a large number of campus parking tickets he had accumulated. The Texas Court of Appeals found the withholding of the degree valid because the University's traffic and parking regulations authorized such an action.

B. Revoking a Degree

Maurice Goodreau sued the University of Virginia in 1998 after it revoked the Bachelor of Science degree he had received in 1990.⁴³ During the Spring of his final year at the University, Goodreau used his position as president and treasurer of a student club to steal more than \$1500 in University funds by submitting forged or false reimbursement vouchers. Goodreau's actions remained undetected during the remainder of his student days.

At the beginning of the following academic year, the incoming president of Goodreau's former club noticed discrepancies in the organization's records and referred the matter to University police. Goodreau eventually admitted taking the funds for personal use and pled guilty to misdemeanor embezzlement. In addition to the criminal matter, the University's Honor Committee initiated an honor case against Goodreau. He did not cooperate with the investigation because he thought there should not be a hearing since he was no longer a student.

A member of the Honor Committee testified that he both wrote and called Goodreau to inform him of his right to a hearing and that there was a possibility that his degree could be revoked. Goodreau made no response. Eventually the Honor Committee informed the Registrar's Office that Goodreau could not reenroll in the University.

Later on when Goodreau applied for admission to the University to pursue a masters degree in business administration, he was informed that there was a notation on his transcript that his enrollment was "discontinued." Goodreau filed a grievance to have the "enrollment

⁴²690 S.W.2d 646 (Tex. Ct. App. 1985).

⁴³*Goodreau v. Rector and Visitors of Univ. of Va.*, 116 F.Supp.2d 694 (W.D. Va. 2000).

discontinued” notation on his transcript removed. In his grievance letter, Goodreau once again admitted misappropriating the funds. Considerable dispute existed as to whether Goodreau was informed that a possible result of the grievance would be the revocation of his degree. Eventually the Honor Committee recommended to the General Faculty that it revoke Goodreau’s degree. President Casteen informed Goodreau that he could submit materials to the faculty committee for consideration. He did, but he was not invited to attend a hearing. On April 15, 1998, the General Faculty revoked Goodreau’s degree.

Goodreau sued, and the University moved for summary judgment. The district court acknowledged that the University had the implied power, with proper procedural safeguards, to revoke the degree of a student who violated the Honor System. However, the court found material questions of fact as to whether the University gave Goodreau proper notice of the possible sanctions against him [degree revocation] and properly considered the information he submitted. It, therefore, denied the University’s motion for summary judgment on Goodreau’s due process claim of insufficient notice.⁴⁴

In a highly visible case, M.I.T. revoked the degree of Charles Yoo, a 1998 graduate, for a period of five years for his alleged involvement in the death of Scott Krueger, a freshman fraternity pledge.⁴⁵ Yoo was a pledge trainer in Phi Gamma Delta fraternity at M.I.T. at the time of the fraternity incident that caused Krueger’s death and allegedly purchased the alcohol and instructed pledges on the amount of alcohol they were expected to drink.⁴⁶ Yoo denied these allegations. Criminal charges were brought against the fraternity (and eventually dropped after

⁴⁴*Id.*

⁴⁵James L. Butcher, *MIT v. Yoo: Revocation of Academic Degrees for Non-Academic Reasons*, 51 CWRLR 749 (2001).

⁴⁶ *Id.* at 750.

the fraternity dissolved), but not against Yoo. M.I.T. paid the Krueger family six million dollars for the institution's role in the tragic incident.⁴⁷

The decision to revoke the degree based upon Yoo's alleged misconduct has been controversial, both in legal and educational circles.⁴⁸ Yoo's attorney complained that the punishment was too harsh and that the disciplinary hearing had been unfair since Yoo was not given an opportunity to confront his accusers.⁴⁹ Yoo eventually filed suit against the University. The trial court granted summary judgment to M.I.T., and Yoo appealed. The Massachusetts Court of Appeals affirmed and dismissed Yoo's complaint.⁵⁰ One of the important points to note in this case is that M.I.T.'s published policy provided that the University may withdraw academic degrees "in the event that a case is brought after graduation, for actions that occurred before graduation but were unknown at the time."⁵¹

Utilizing an interesting theory in degree revocation cases, the plaintiff in *Sheridan v. Trustees of Columbia University*⁵² sued the University for refusing to forward his transcript to graduate schools until he paid his outstanding tuition bill. He argued that, as a degree holder, he was in a fundamentally different position from plaintiffs in cases in which the courts had held

⁴⁷Leo Reisberg, *MIT Revokes Diploma of Graduate for Alleged Role in Drinking Death of Freshman*, CHRON. HIGHER EDUC., Aug. 13, 1999, at A-4.

⁴⁸Butcher, *supra* n.45 at 750; Reisberg, *supra* n.47 ("The action marks a rare, if not unprecedented, effort by a university to discipline an alumnus for a non-academic violation that took place during college.")

⁴⁹Resiberg, *supra* n.47.

⁵⁰*Yoo v. Massachusetts Institute of Technology*, 801 N.E.2d 324 (Mass. Ct. App. 2004).

⁵¹Resiberg, *supra* n.47.

⁵²296 A.D.2d 314 (N.Y. App. Div. 2002).

that a university has no legal obligation to provide a diploma or transcript to a graduating student with outstanding financial obligations to the institution. He claimed that by not forwarding his transcript, Columbia was effectively revoking his degree.

The court made short order of plaintiff's claim. It acknowledged that while the University's refusal to forward his transcript to graduate schools to which he was applying might jeopardize his being accepted, the University did not revoke its certification that plaintiff possessed all the knowledge and skills represented by the degree.

Degree revocation has serious implications outside the loss of the degree. For example, the Supreme Court of New Jersey revoked the license of John Benstock to practice law in the State of New Jersey after New York Law School revoked his Juris Doctor degree for failing to reveal material information on his application to law school and admission to the bar.⁵³

IV. Procedural Considerations in Withholding or Revoking Degrees

Given a higher education institution's power to withhold or revoke a degree, what procedural protections must the institution give the student? If the institution is public, the Due Process Clause of the Fourteenth requires certain procedural protections, particularly if the court finds the student holds a property interest in the possession of the degree. If the institution is private, principles of fundamental fairness in decision-making and adherence to contract terms will be called into play.⁵⁴

A. Public Institutions

In *Crook v. Baker*,⁵⁵ the Sixth Circuit discussed the procedural protection required to meet constitutional due process when a public institution revokes an already awarded degree.

⁵³*In the Matter of John E. Benstock*, 701 A.2d 129 (N.J. 1997).

⁵⁴For a good discussion of procedural issues involved in revoking academic credentials, see Robert Gilbert and Jane D. Oswald, *Academic Dishonesty: Revoking Academic Credentials*, 32 J. MARSHALL L. REV. 67 (1998).

⁵⁵813 F.2d 88 (6th Cir. 1987).

The plaintiff, Crook, received a Master's Degree of Science in geology and mineralogy in 1977 from the University of Michigan. As a part of his master's thesis, Crook claimed to have discovered a new, naturally occurring mineral, which he named "texasite." The following year, faculty at the University discovered that a sample of a synthetic mineral created at the University, and having the same chemical composition as texasite, had disappeared from campus. Upon closer inspection, faculty also became aware that Crook had not logged enough lab time on the electronic microscope to have generated the data that he included in his thesis.

Suspecting that Crook had fabricated his data based on the chemical properties of the synthetic substance taken from the University, the University invited Crook back to re-conduct his experiments in 1979. Crook was then informed that an Ad Hoc Disciplinary Committee had been formed to review his case and, depending on the outcome of the investigation, his degree might be revoked by the University. Crook and the Committee exchanged extensive statements prior to the hearing, which lasted eight hours. Crook was allowed to have his attorney present, although the attorney was not allowed to examine or cross-examine witnesses.

Following the hearing, the Committee issued a finding that the data in the thesis had been fabricated, but made no recommendation as to whether Crook's degree should be revoked. The findings of the Committee were forwarded to a higher level body, the Executive Board of the Graduate School, which recommended that the University rescind Crook's degree. This recommendation was, in turn, reviewed by a vice-president who had no previous dealings with Crook's case. The Board of Regents of the University then reviewed the findings of the Committee, the recommendations of the Executive Board, and the recommendation of the vice-president. Crook's attorney was allowed to speak on Crook's behalf before the Board of Regents, which subsequently voted to rescind Crook's degree.

Crook challenged the revocation, claiming that he had not been afforded adequate due process. The court discussed the requirements of due process, dividing its discussion into procedural and substantive issues. First, the court noted that procedural due process was adequate in that Crook had been allowed to file a response, present witnesses, have counsel advise him, make statements on his own behalf, cross-examine witnesses, file exceptions to the Committee's report, and have his attorney speak on his behalf before the Board of Regents

before the final decision. As to substantive due process, the court asked whether the decision of the Board of Regents was arbitrary and capricious or supported by adequate evidence. The court remarked that the Board had clearly exercised professional judgment in making its decision, and found that there was *clear and convincing evidence* Crook had fabricated the data for his thesis.

B. Private Institutions

When private institutions seek to revoke a degree, constitutional requirements usually do not apply.⁵⁶ For example, in a suit filed against Claremont University Center by a student whose doctoral degree was revoked on a determination that his dissertation was plagiarized, a California appellate court analyzed this private University's action using a deferential standard of review, asking whether the University abused its discretion. In *Abalkhail v. Claremont University Center*,⁵⁷ the University granted Abalkhail a Ph.D. degree in 1979. The following year the University received a communication that Abalkhail's dissertation contained material copied from another author's paper. The University appointed a committee to investigate and determine whether plagiarism had occurred and whether degree revocation was warranted.

After receiving the report of the investigative committee concluding that academic dishonesty may have occurred, the dean of the graduate school gave Abalkhail notice of a formal hearing and of the procedures that would be used. At the hearing, Abalkhail received a copy of the complaint instigating the proceedings and was given an opportunity to present his views in the matter. Abalkhail was permitted to question a witness and to suggest any additional procedures he deemed necessary to ensure him a fair hearing.

The investigative committee met with Abalkhail on a second occasion, apprized him of additional evidence in the matter, and asked him for an explanation. Two times after that, a committee member wrote Abalkhail to inform him of the evidence against him and invite him to

⁵⁶See, e.g., *Imperiale v. Hahnemann Univ.*, 966 F.2d 125 (3rd Cir. 1992).

⁵⁷2d Civ. No. B014012 (Cal. Ct. App. 1986). For a good analysis of this case, see Bernard D. Reams, *Revocation of Academic Degrees by Colleges and Universities*, 14 J.C.&U.L. 283 (1987); Kaplin & Lee, *supra* n.10 at 476-77.

respond. The committee then concluded that Abalkhail had plagiarized substantial portions of his thesis and recommended revocation of his degree. The University accepted the committee's recommendation, revoked the degree, and notified Abalkhail of its action. Abalkhail then sued, alleging deprivation of due process and lack of a fair hearing.

The California Court of Appeals reviewed extensively the University's due process procedures and upheld the University's action. The court first noted that an educational institution's decisions are subject to limited judicial review because educators are uniquely qualified to evaluate student performance. That being the case, the court would set aside a university's decisions only if there were found to be an abuse of university discretion.

The court found no such abuse of discretion in *Abalkhail*. Although stating that the plaintiff was entitled to procedural fairness since revocation of a degree constitutes deprivation of a significant interest, he was entitled only to minimal due process – the “minimum requisites of procedural fairness.”⁵⁸ The court found that Abalkhail received adequate notice of the charges against him, of the possible consequences, and of the process to be used. These procedures, the court found, afforded Abalkhail fair notice, a fair opportunity to present his position, and a fair hearing.⁵⁹

In summary, although private universities are not required to afford the complete package of constitutional due process public institutions must provide, courts expect private universities to provide minimal procedural protection to ensure at least fundamental fairness in decisions to withhold or revoke academic degrees.⁶⁰ At least one court has suggested that procedural protections for private university students should parallel the protections available to public university students. In *Slaughter v. Brigham Young University*,⁶¹ the University dismissed a

⁵⁸*Id.* at 15.

⁵⁹*Id.* at 21.

⁶⁰Reams, *supra* n.57 at 297.

⁶¹514 F.2d 622 (10th Cir. 1975).

student for using without permission a professor's name as coauthor of an article the student submitted for publication. The court used constitutional due process as its guide in determining the adequacy of the private university's procedural protections. It concluded that the procedures followed by Brigham Young met the requirements of constitutional due process as applied to public universities and commented that there was no need to "draw any distinction, if there be any, between the requirements . . . for private and public institutions."⁶²

C. Entity Making Final Revocation Decision

While a university that grants a degree may later, after providing due process, revoke that degree, it would be a mistake to believe that a degree may be revoked by *any* body within the university. In *Hand v. Matchett*,⁶³ a doctoral student's Ph.D. was revoked after evidence indicated the student had plagiarized his dissertation. The New Mexico State University Board of Regents had approved a lengthy process for determining whether a degree should be revoked. Upon allegations of academic misconduct, the graduate dean would do a preliminary investigation. If the investigation indicated that the misconduct had actually occurred, then an *ad hoc* committee would be formed to hear the evidence. The decision of the committee could be appealed to the executive vice president of the university and the president. Along the way, the student, or former student, would be invited to respond to the charge and present his evidence.

The former student challenged the basic right of the university to revoke his degree, as well as the process by which the degree was revoked. The Tenth Circuit, deciding in favor of the student, reached its decision on a purely state law issue: Whether the entity revoking the degree was the proper body to do so? Determining that New Mexico state statutes granted the Board of Regents alone the power to confer (and, therefore, revoke) degrees, the Board could not delegate

⁶²*Id.* at 625.

⁶³957 F.2d 791 (10th Cir. 1992).

that authority to a lower body as had been done here. Thus, the court held the degree revocation to be void.⁶⁴

D. Degrees of Due Process

There is a clear dichotomy between a student's due process rights in disciplinary dismissals and in academic dismissals.⁶⁵ The higher of the two standards, the one requiring due process for disciplinary matters, typically is used when a degree is to be revoked, given that the cause for revocation generally alleges misconduct, fraud, cheating, misrepresentations, or the like.⁶⁶

V. **Judicial Deference to Academic Decisions of Universities**

The academic decisions of colleges and universities are generally awarded great deference by the courts.⁶⁷ Absent arbitrary or capricious actions, courts prefer not to alter decisions regarding admissions, grading, degree requirements, and other purely academic

⁶⁴*Id.* at 796.

⁶⁵*Wright v. Texas Southern Univ.*, 392 F.2d 728, 729 (5th Cir. 1968).

⁶⁶Stephen B. Thomas and Deborah L. Barber, *The Right to Rescind a Degree*, 33 EDUC. L. REP. 1 (1986).

⁶⁷*See, e.g., Regents of Univ. of Calif. v. Bakke*, 438 U.S. 265, 312 (1978) (stating that courts have given academic institutions great deference in their decisions on who may be admitted); *Faulkner v. Univ. of Tenn.*, 627 So. 2d 362, 367 (Ala. 1992) (stating that “educational institutions are uniquely situated to make determinations regarding academic qualifications or the lack thereof. Establishing degree requirements and granting degrees are within the province of universities, not courts.”); *Waliga*, 488 N.E.2d at 852-53 (stating that courts generally do not interfere with fundamental university functions, including the granting and revoking of academic degrees).

matters.⁶⁸ The Supreme Court reiterated its judicial deference to universities in *University of Michigan v. Ewing*,⁶⁹ saying:

When judges are asked to review the substance of a genuinely academic decision . . . they should show great respect for the faculty’s professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.⁷⁰

In *Board of Curators of the University of Missouri v. Horowitz*,⁷¹ the United States Supreme Court upheld the dismissal without a formal hearing of a fourth year medical student for failure to meet the academic standards of the university. The Court found that the student had been fully informed by the faculty that her progress had been inadequate and that she was in danger of dismissal. Showing great respect for the judgment of the faculty in academic matters, the Court declared that due process requirements must be adapted to a particular situation and that a certain set of procedures cannot be applied in every situation: “The need for flexibility is well illustrated by the significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct. This difference calls for far less stringent procedural requirements in the case of an academic dismissal.”⁷²

⁶⁸For a thorough, comprehensive, and excellent discussion of judicial deference to decisions of higher education institutions in both the public and private sector, see Kaplin & Lee (3rd ed.) at 465-500 and (Supp. 2000) at 291-96.

⁶⁹474 U.S. 214 (1985).

⁷⁰*Id.* at 225.

⁷¹478 U.S. 78 (1978).

⁷²*Id.* at 86.

This same deference has been extended to decisions to withhold or revoke degrees for academic reasons. In *Napolitano v. Trustees of Princeton University*,⁷³ the university disciplinary committee determined that a graduating senior had plagiarized a term paper and withheld her degree for one year. At trial, rather than conduct a full-fledged hearing, the judge reviewed the sufficiency of the evidence against the student. On appeal, the student challenged the deference that the trial court had given the university's decision. The appellate court found that a claim of plagiarism was a claim of academic fraud, not one of general misconduct,⁷⁴ and relying on *Horowitz*, came to the conclusion that the trial judge "should not have become a super-trier under due process considerations."⁷⁵

⁷³453 A.2d 263 (N.J. Super. Ct. App. Div. 1982)

⁷⁴*Id.* at 271. "It is clear that plaintiff was charged with plagiarism – in other words, that plaintiff attempted to pass off as her own work, the work of another. That act, if proven, constituted academic fraud. We do not view this case as involving an appeal from a finding of general misconduct; instead, we are concerned with the application of academic standards by the authorities at Princeton." *Id.*; see also, e.g., *Mahavongsanan v. Hall*, 529 F.2d 448, 450 (5th Cir. 1976) ("Misconduct and failure to attain a standard of scholarship cannot be equated. A hearing may be required to determine charges of misconduct, but a hearing may be useless or harmful in finding out the truth concerning scholarship."). *But, cf. Crook v. Baker*, 813 F.2d 88 (6th Cir. 1987) (pointing out that university regents' process for determining whether to rescind a degree based on academic fraud involved elements of both academic and disciplinary decisions and student was, therefore, accorded notice that was usually given in disciplinary matters).

⁷⁵*Napolitano*, 453 A.2d at 275. *But, cf., Mawdsley, Judicial Deference: A Doctrine Misapplied to Degree Revocations*, 70 EDUC. L. REP. 1043 (1992) (arguing that judicial deference should not be applied once student has graduated and no longer has on-going relationship with college or university).

Although courts give deference to the academic decisions of universities and colleges, that deference is limited, and an institution may not act arbitrarily or with malice in withholding or revoking a degree. In *Tanner v. Board of Trustees of the University of Illinois*,⁷⁶ a graduate student had completed both a dissertation and comprehensive examinations when he was informed by the University that both were unacceptable because his thesis committee had never been formally recognized by the University.⁷⁷ The student sought a writ of mandamus ordering the university to issue his degree. Although his claims were dismissed by the lower court, the appellate court found that the student had presented sufficient evidence of arbitrary and capricious conduct on the part of the university to proceed on his mandamus theory.

VI. Summation

Courts have recognized the right of colleges and universities to withhold and revoke degrees for both academic and non-academic violations. They require greater due process when such adverse actions are taken against students for non-academic reasons, granting to students in those situations a full panoply of procedural protections. Courts give great deference to decisions of academic institutions when degrees are withheld or revoked for purely academic reasons. Determining whether certain wrongful acts should be classified as academic or non-academic opens up a gray area ripe for further debate and discussion (plagiarism, for example).

Commentators have raised concerns over withholding and revoking degrees for non-academic reasons, asking just where will the line be drawn. “The main problem with allowing the revocation of an academic degree for non-academic reasons is the question of where it will end. If universities are permitted to revoke degrees years after graduation, on what grounds may they do so?”⁷⁸ Should the university set forth in advance a list of misconduct that merits degree revocation or withholding? Should there remain a distinction between procedural protections

⁷⁶363 N.E.2d 208 (Ill. App. Ct. 1977).

⁷⁷*Id.* at 209.

⁷⁸Butcher, *supra* n. 45 at 765.

afforded students in private as opposed to public institutions? These questions are legitimate and deserve thoughtful contemplation by those in academic policy-making positions.

Closely akin to this topic is that of falsified academic credentials and what disciplinary actions colleges and universities should have in place to deal with situations in which faculty, staff, or students obtain employment or admission based on untruthful representations on their curriculum vitae or applications. While many of the philosophical and procedural issues are the same as with degree withholding or revocation, that discussion is beyond the scope of this outline.⁷⁹

⁷⁹For general information on the subject of falsified academic credentials, see *UCLA Soccer Coach Concedes that Degree Came from Diploma Mill*, CHRON. HIGHER EDUC., Feb. 8, 2002; Welch Suggs, *Lessons Unlearned: Colleges and athletics officials cope with falsehoods on resumes and in biographies*, CHRON. HIGHER EDUC., July 5, 2002; Katherine S. Mangan, *The Fine Art of Fighting Fakery*, CHRON. HIGHER EDUC., Nov. 1, 2002; Andrea L. Foster, *On the Web, It's Easy to Earn Straight A's*, CHRON. HIGHER EDUC., Feb. 7, 2003; Lawrence Biemiller & Welch Suggs, *Basketball Scandals Mar March Madness*, CHRON. HIGHER EDUC., Mar. 21, 2003; Robin Wilson, *Fall From Grace: One lie, retold over 26 years, undoes a professor's teaching career*, CHRON. HIGHER EDUC., April 4, 2003; Scott Smallwood, *The Price of Murder: A triple homicide haunts a professor who thought he'd already paid for his crime*, CHRON. HIGHER EDUC., Sept. 12, 2003; Scott Smallwood, *Should Colleges Check Up on Professors?* CHRON. HIGHER EDUC., Sept. 12, 2003; Julianne Basinger, *4 Years after a Scandal, a President Steps Down*, Mar. 5, 2004; Thomas Bartlett, *Move to Fire 2 Professors Roils Campus in Mississippi*, CHRON. HIGHER EDUC., Mar. 19, 2004; Welch Suggs, *Athletics Director Caught in 2002 Resume Scandal Gets a Second Chance*, CHRON. HIGHER EDUC., May 7, 2004.

**HYPOTHETICAL FOR DISCUSSION IN CONJUNCTION
WITH PRESENTATION ON DEGREE WITHHOLDING AND REVOCATION**

Rose Rambler completed all academic requirements for her Ph.D. degree in Psychology at Beacon Hill University at the end of the Fall 2003 semester. Since Beacon Hill did not have a mid-year commencement exercise, Rose was scheduled to receive her degree at the June exercises. Not having a job and not really being too interested in going to work and losing the check from home, Rose simply hung around the campus during the Spring 2004 semester.

Not having enough to do, Rose began to frequent the bars and before long was drinking excessively with anyone she could find. On March 15, 2003, Rose invited a group of 9th and 10th grade students to join her for drinks. She bought the drinks and created games in which the students won money she provided for every drink they consumed within one minute. Before long, Shy Sylvia, who had never had a drink before, passed out. Rose put Sylvia in her car and started to take her to the hospital. However, Rose was so intoxicated that she attempted to enter the Interstate on the exit ramp and ran head-on into another vehicle, killing not only Shy Sylvia but also all the occupants of the other car.

Rose was charged with vehicular manslaughter, among other things. Provost Sam Shocked was so offended by Rose's outrageous conduct that he announced without a hearing of any kind that Rose would not receive her degree in June. Rose sued. What are the issues? Would your assessment of this situation be different if Provost Shocked had given Rose a hearing before making the final decision to withhold her degree?