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# Constitutional Law - Due Process - Hearing before Expulsion from State Supported College

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proof of the running at large raises a presumption of negligence on the part of the owner.[14]

It has been early established that a plaintiff may recover damages for such harms as were alleged in the instant case i e., (1) injuries inflicted in a fight with plaintiff's animal[15] and (2) the "misalliance"[16] of an inferior bull with a pedigreed cow.[17] In the latter case the usual measure of damages is the difference in value of the cow before and after the impregnation.[18]

The law in North Dakota on the liability of an owner for the trespass of his livestock is presently governed by statute: "No cattle, horses, mules, swine, goats, or sheep shall be permitted to run at large."[19] At one time it was lawful for livestock to run at large during a season of the year when they would be unlikely to damage growing crops.[20] However, as early as 1892 the North Dakota Supreme Court declared the common law rule to be in effect in the State.[21]

The development of the law relating to an owner's liability for the trespass of his animals is strongly indicative of the fact that the law is not static, but rather, is readily adaptable to the conditions and circumstances of the time.

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CONSTITUTIONAL LAW — DUE PROCESS — HEARING BEFORE EXPULSION FROM STATE SUPPORTED COLLEGE — Plaintiffs, while attending a state supported college, were expelled for reason of misconduct by the President of the institution on the recommendation of the State Board of Education. Plaintiffs

14. Brotemarke v. Snyder, 99 Cal. App. 2d 388, 221 P.2d 992 (1950); Fallon v. O'Brien, 12 R.I. 518, 34 Am. Rep. 713 (1880).
15. Houska v. Hrabe, 35 S.D. 269, 151 N.W. 1021 (1915).
16. Kopplin v. Quade, 145 Wis. 454, 130 N.W. 511, 512 (1911) (The opinion is a classic example of legal humor on the subject).
17. Crawford v. Williams, 48 Iowa 247 (1878) (dictum); Kopplin v. Quade, 145 Wis. 454, 130 N.W. 511 (1911).
18. Madison v. Hood, 207 Iowa 495, 223 N.W. 178 (1929); Crawford v. Williams, 48 Iowa 247 (1878). In 34 Iowa L. Rev. the general rule as to the measure of damages is criticized as being inadequate in that it may not permit recovery of the difference in value of the resulting inferior calf and a purebred eligible for registry.
19. N.D. Cent. Code § 36-11-01 (1961).
20. N.D. Rev. Code § 1549 (1899) "It shall be lawful for cattle, horses, mules, ponies and sheep to run at large from the first day of November until the first day of April of each year. . . ."
21. Bostwick v. Railway Co., 2 N.D. 440, 51 N.W. 781, 783 (1892) "In this state . . . The common law rule is in force, and every man is bound, at his peril, to keep his stock upon his own premises, and is liable for all damage done by such stock upon the lands of another, whether fenced or unfenced." See also, Schneider v. Marquart, 45 N.D. 390, 178 N.W. 195 (1920) for a discussion of the Bostwick case and a general historical summary of the law on the point up to 1920.

were given no opportunity for a hearing prior to expulsion and brought an action seeking preliminary and permanent injunctions restraining the State Board of Education and others from obstructing their right to attend college. The United States District Court for the Middle District of Alabama upheld the dismissal and denied the relief sought. The Plaintiffs appealed and the Court of Appeals *held,* one judge dissenting, that due process required notice and some opportunity for a hearing before the students at the tax-supported college could be expelled for misconduct. The dissenting judge argued that although there is conflicting authority it appears that the prevailing rule eliminates the requirement of a hearing. *Dixon v. Alabama State Board of Education,* 294 F.2d 150 (5th Cir. 1961).

It is well settled that colleges and universities have the power to expel[1] students for reason of scholarship[2] or misconduct.[3] The question of whether a hearing is required before the student may be expelled is not settled. It has been generally held that no hearing is required when a student is expelled for scholastic reasons.[4] However, the courts are not in agreement as to the requirement of a hearing when expulsion is based on misconduct.[5] Confusion also arises from the fact that the authorities requiring a hearing are not in accord as to the formality required.[6]

It has been suggested that the relationship between a student and a state college or university is one of fiduciary[7] or

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1. John B. Stetson University v. Hunt, 88 Fla. 510, 102 So. 637 (1924). Expulsion, as the term has been defined in respect to expelling a student from a college or university, means to eject, banish, or cut off permanently from the privileges of the institution.

2. Barnard v. Inhabitants of Shelburne, 216 Mass. 19, 102 N.E. 1095 (1913) (If there is opportunity afforded to the pupil to attend another school adapted to his ability and accomplishments); West v. Board of Trustees of Miami University, 41 Ohio App. 367, 181 N.E. 144 (1931). **Contra,** Miller v. Dailey, 136 Cal. 212, 68 Pac. 1029 (1902).

3. Kenney v. Gurley, 208 Ala. 623, 95 So. 34 (1923); Douglas v. Campbell, 89 Ark. 254, 116 S.W. 211 (1909); Tanton v. McKenney, 226 Mich. 245, 197 N.W. 510 (1924); State v. District Board of School Dist. No. 1, 135 Wis. 619, 116 N.W. 232 (1908).

4. Barnard v. Inhabitants of Shelburne, 216 Mass. 19, 102 N.E. 1095 (1913).

5. Baltimore University v. Colton, 98 Md. 623, 57 Atl. 14 (1904) (notice and hearing required); People **ex rel.** Hill v. McCauley, 3 Pa. Co. Ct. R. 77 (1886) (hearing required). **Contra,** People **ex rel.** Bluett v. Board of Trustees of University of Illinois, 10 Ill. App. 2d 207, 134 N.E.2d 635 (1956); Barker v. Trustees of Bryn Mawr College, 278 Pa. 121, 122 Atl. 220 (1923) (private college); Vermillion v. State **ex rel.** Englehardt, 78 Neb. 107, 110 N.W. 736 (1907).

6. People **ex rel,** Hill v. McCauley, 3 Pa. Co. Ct. R. 77 (1886) (formal hearing required). **Contra,** State **ex rel.** Ingersoll v. Clapp, 81 Mont. 200, 263 Pac. 433 (1928) (not as formal as court proceeding).

contract,[8] either express or implied. If a fiduciary relationship exists, there is required a full disclosure of all relevant facts in any transaction between them.[9] If the relationship is one of contract, the student either expressly or impliedly agrees to subject himself to the rules and regulations of the school. According to this theory, the student has waived his right to a hearing prior to expulsion. The majority in the instant case discounts this theory on the ground that the State cannot condition the granting of even a privilege upon the renunciation of the constitutional right to procedural due process.[10]

The majority opinion in the instant case seems to adhere to the minority rule in this matter and cites only two cases[11] as precedent. A later Montana case[12] declared that one of these cases, *Gleason v. University of Minnesota*,[13] was not in point.

The dissenting judge presents somewhat more authority for his opinion, all of which appears to deny this is due process. Due process, although differing somewhat in various situations, would seem to require the opportunity for a student to present his case and to confront his accusers.

Justice Frankfurter states that in determining the requirements of due process, the balance of hurt complained of and good accomplished is one of the considerations that must be weighed.[14] It is quite forseeable that the future of a student may well depend upon his retention or expulsion. When his great private interest is weighed against the interest of the school, it appears that due process would be violated if the hearing were denied.

North Dakota has not decided any cases involving the necessity of a hearing prior to expulsion but it is the writer's opinion that the courts should follow the decision reached in the instant case in an effort to preserve fair play and justice.

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7. See 70 Harv. L. Rev. 1406 (1957).
8. John B. Stetson University v. Hunt, 88 Fla. 510, 102 So. 637 (1924); Stallard v. White, 82 Ind. 278, 42 Am. Rep. 496 (1882); **see also** Baltimore University v. Colton, 98 Md. 623, 57 Atl. 14 (1904).
9. RESTATEMENT, TRUSTS § 170 (1935).
10. Dixon v. Alabama State Board of Education, 294 F.2d 150, 156 (5th Cir. 1961).
11. Gleason v. University of Minnesota, 104 Minn. 359, 116 N.W. 650 (1908); People **ex rel.** Hill v. McCauley, 3 Pa. Co. Ct. R. 77 (1886).
12. State **ex rel.** Ingerson v. Clapp, 81 Mont. 200, 263 Pac. 433 (1928).
13. 104 Minn. 359, 116 N.W. 650 (1908).
14. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951).