

UNC Legal Matters




Welcome to this module describing our legal and compliance requirements while traveling abroad.

By the end of this module, you will be able to:

- Describe your "duty of care" toward the participants in your program
- Explain the most common legal claims arising out of faculty-led study abroad programs
- Apply best practice risk mitigation strategies during pre-departure and while abroad

INTRODUCTION

 **Duty of Care**

 **Legal Claims**

 **Risk Mitigation Best Practices**

CONCLUSION

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Duty of Care

AU Abroad UNC



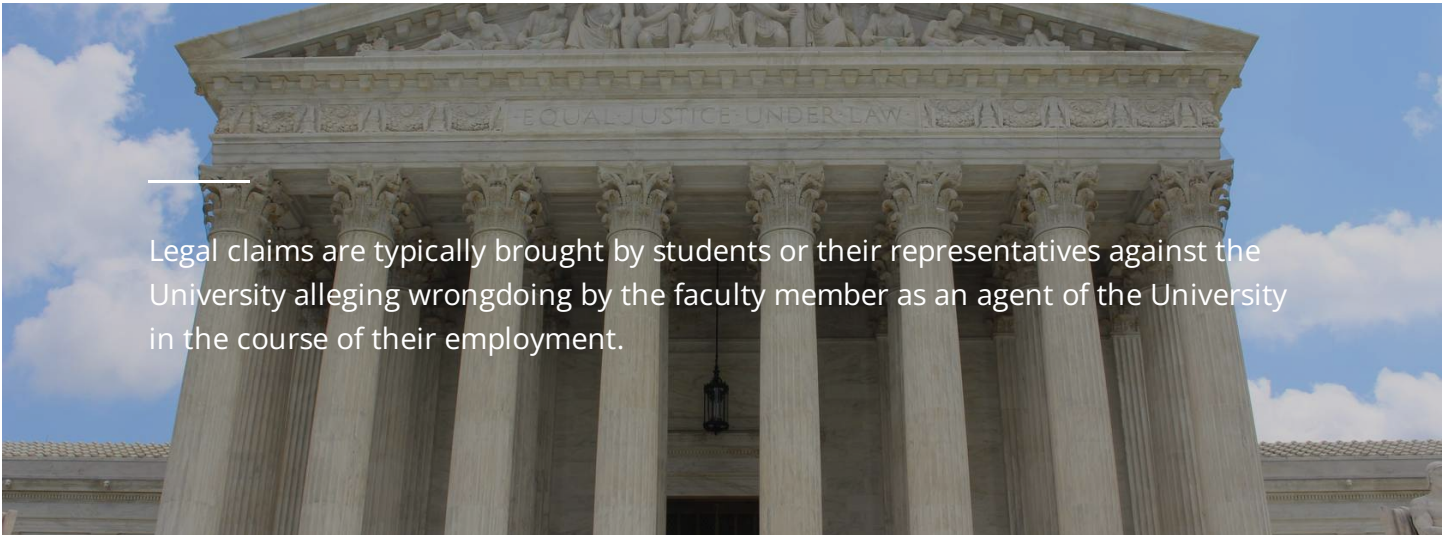
UNC has multiple risk-mitigation measures in place for study abroad programs; however, as the faculty or staff member accompanying participants on the program, you will be uniquely situated to address issues on-site.

Duty of Care

During your program, you will have a “duty of care” towards the participants on your program.

Duty of care is defined as the **positive duty** “that a **person act towards others and the public with the watchfulness, attention, caution, and prudence that a reasonable person in the circumstances would use.**”

Legal Claims



Legal claims are typically brought by students or their representatives against the University alleging wrongdoing by the faculty member as an agent of the University in the course of their employment.

Legal Claims

The most common legal claims arising out of faculty-led study abroad programs include the following. Click on each drop-down menu to learn more.

Negligence —

Negligence is the most likely cause of liability, as it alleges that the University breached its duty of care towards the participant or has otherwise acted in a wrongful manner through its actions or omissions.

What is negligence?

1. Negligence is the **most likely cause of liability**
2. Four elements of a negligence claim based on NC law:
 - a. UNC owes a **duty of care** to the student
 - b. UNC **breaches** that duty to care*
 - c. **Failure to warn** and **failure to ensure protective measures** can be breaches of this duty
3. UNC's breach actually and proximately **caused the student's injury/injuries***
4. Student suffered **actual damages**

* Litigation often hinges on these two elements

Discrimination —

Discrimination against someone means to treat that person differently, or less favorably, for some reason. Protected statuses are: age (40 or older), color, disability, gender, gender expression, gender identity, genetic information, national origin, race, religion, sex, sexual orientation or veteran status.

Miscellaneous Legal Claims —

Miscellaneous legal claims, such as failure to accommodate disabilities. The duty to accommodate may require that alternative arrangements be made to ensure a person or group can fully participate.

Understanding the types of legal cases that various universities have faced will help us to ensure our practices are in the best interest of our students and university. Click on each tab below to learn more...

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SCHOOL OF...**

**THACKURDEEN V. DUKE
UNIVERSITY**

MUNN V. HOTCHKISS

WIGH

Downes v. Oglethorpe Univ., Inc. (2017)

Student Allegation

Parents sued Oglethorpe University after their son drowned in the Pacific Ocean while on an academic trip led by two professors, alleging negligence by the university in taking the students to a dangerous beach without adequate safety training and preparedness.

Result

No liability for the University - student assumed the risk of drowning.

Helpful/Harmful Facts

The university specifically briefed students regarding the dangers of swimming and discussed wearing life jackets; students acknowledged they were good swimmers and signed waivers.

Key Takeaway

Universities are not liable for negligence if an individual freely chose a course of action with full knowledge of its danger.



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Doe v. Rhode Island School of Design (2019)

Student Allegation

Student Doe was sexually assaulted by another student during the first night of a study abroad program run by the Rhode Island School of Design. She was unable to lock her door and was asleep when the incident began. Student Doe alleged negligence (“negligent undertaking” and “negligent supervision”) for failing to provide reasonably safe housing accommodations.

Result

Summary judgment was denied for defendant.

Helpful/Harmful Facts

The Study Abroad Coordinator at the host program discussed how to secure the exterior doors with the faculty and TA, no discussion was made on whether the bedroom doors had locks. (The court concluded this made it reasonably foreseeable that a student could be a victim of an attack without reasonably safe housing accommodations.)

Key Takeaway

Schools have a duty to exercise reasonable care in providing secure housing for students.



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Thackurdeen v. Duke University (2018)

Student Allegation

Student drowned on the final day of a study abroad program in Costa Rica. The student's parents alleged that Duke and the program failed to exercise reasonable care and breached their duty of care by: taking the students to the beach notorious for rip currents; failing to make inquiries regarding dangerousness and safety measures; failing to warn the students of the danger of the beach and swimming in the ocean; failing to request lifeguards; and, failing to rescue the student.

Result

No liability for university—barred by waiver and release

Helpful/Harmful Facts

Although Duke had taken students to the beach for the three years prior, the students on this trip did not have notice of the beach trip and it was not anywhere on the program's itinerary.

Costa Rican beaches are known for dangerously strong rip currents and swimming is not advisable. Students were informed of the risk and instructed to "swim parallel to the shore if caught in a rip current".

Students signed a waiver and release form. The beach trip was a program-sponsored event and was not outside the scope of the waivers signed.

Key Takeaway

University/program must inform students of the risks involved with an activity, and provide instruction on how to mitigate risk.



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Munn v. Hotchkiss (2018)

Student Allegation

On a faculty-led school study abroad program in China, The Hotchkiss School school failed to warn students and parents of the risk of exposure to tick-borne encephalitis during a field trip to the forest; school failed to ensure students took protective measures against insect bites to prevent contracting the disease.

Result

Jury award of \$41.75 million for the student.

Helpful/Harmful Facts

The University provided students/parents with a hyperlink to wrong CDC website; bug spray was listed as "miscellaneous" and not required; the school provided no warning about tick-borne encephalitis even though it was aware of the risk, nor any warning to wear protective clothes before heading into tick-infested area.

Key Takeaway

Universities are obligated to inform students of all known and foreseeable risks.



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Wight v. Ohio State Univ. (2001)

Student Allegation

OSU graduate student became ill during a University-led high-altitude expedition in Tibet and died less than three months later as result of complications from lung infection. His parents sued the university alleging negligence based on university's failure to properly monitor the student's health during the expedition, leaving the student alone while being treated, failure to provide certain medical treatments to the student, and failure to transport the student to a better evacuation site.

Result

No liability for the University - failure to prove a breach of duty of care due to level of support provided throughout the incident, and failure to prove proximate cause of death.

Helpful/Harmful Facts

The university informed student of rigors of high-altitude climbing and provided substantial information about high-altitude illness; the University's expedition leader acted reasonably and decisively when student became ill and as illness progressed and symptoms changed -- followed normal procedures for monitoring and treating altitude-related illness, including moving to lower camps, getting opinions of multiple doctors, evacuating once condition worsened.



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Fay v. Thiel College (2001)

Student Allegation

After falling ill during a faculty-led trip to Peru, the female student was left behind with a Lutheran missionary (a friend of the faculty leader, but not affiliated with the Thiel College) while the group continued on their planned travel. The student underwent an unnecessary surgery and while under anesthesia was sexually assaulted. Student alleged school was negligent for leaving her alone.

Result

Judgment for the student; the case ultimately settled out of court.

Helpful/Harmful Facts

The University did not continue communication with the student after leaving her; the liability waiver did not include medical decisions made by faculty members and was "take it or leave it."

Thiel College owed Fay a special duty of care due to a "special relationship" that arose through the consent form required for participation in the Thiel-sponsored program. Thiel breached the duty of care owed to the student; the faculty should have secured and overseen her medical treatment.

Key Takeaway

Never leave a student alone with medical providers. The person accompanying a student should be affiliated with home university or host program.



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Mattingly v. University of Louisville (2006)

Student Allegation

On a study abroad program in Portugal, a student was raped by a Portuguese man. The next day, student informed faculty advisor of the incident. The faculty advisor took student to the hospital two days later after student complained of continued cramping and bleeding. A few days later, faculty advisor helped student to report the assault to the Portuguese police. The student claimed that neither the university nor the professor who led the program took appropriate measures to prevent the rape or to respond to it.

Result

The university was not liable. Although faculty advisor should have taken student to the hospital and police quicker, the delay was insufficient by itself to constitute deliberate indifference.

Helpful/Harmful Facts

The university has no control over the alleged harasser, little, if any control over the context in which the harassment occurred and no forewarning of the acts.

The faculty advisor held at least one orientation session where he cautioned students to travel in groups, avoid revealing clothing, and the university housed students in private dorms with locking doors.

Risk Mitigation Best Practices

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1

Identify risks

2

Communicate the risks to participants

3

Document that you have communicated the risks and that students understand and accept the risks

With support from UNC, you are responsible for mitigating risks on your study abroad program. In order to help mitigate risks, you should always keep these best practices in mind, both prior to the program's departure and while abroad.

What can you do?

Pre-Departure

- **Local laws, regulations and customs/norms:**
 - Identify how these local laws and customs may be different than in the U.S.
 - Communicate these rules and/or differences, as well as expectations, to students.
 - Document the communication.
- **Country-specific global resources:**
 - Identify country-specific information from global resources such as: U.S. State Department and the CDC.
 - Inform students of these resources and any information which may be relevant for the program.
 - Document the communication.

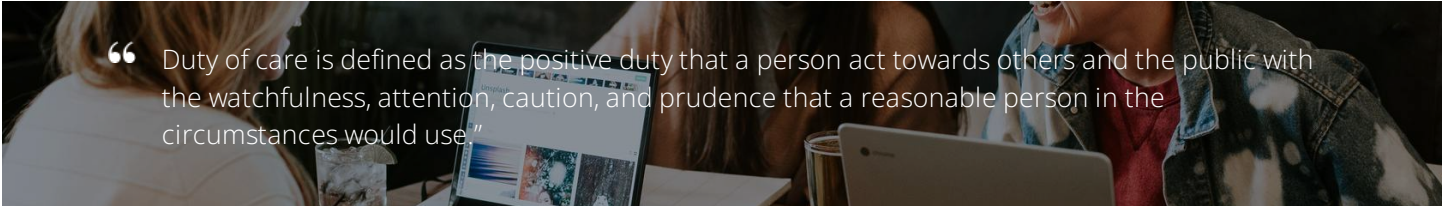
- **Reasonable foreseeable risks – mitigate as much as possible:**
 - Identify reasonable foreseeable risks as part of the program – for example, dangerous travel conditions and risky activities. Collaborate with your Program Director who will work with the Associate Director for Global Travel and University Counsel in advance to mitigate known risks as much as possible.
 - Communicate these foreseeable risks to students ahead of departure.
 - Document the communication.
- **Assumptions of Risk and Release of Liability + Participant Agreements:**
 - Familiarize yourself with the releases students sign as a condition of their participation.

While Abroad

- Conduct on-site orientation upon arrival
- Reiterate information covered pre-departure on local laws, regulations, and risks.
- **Use your best judgment.**
 - Stay mindful of the local laws and customs as well as the risks you identified pre-departure.
 - Balance the needs of all program participants.
- **Remember you are not alone!**
 - Use UNC resources outlined in this training and connect with your Program Director if you have any questions or concerns.
- Act reasonably and diligently. This is key to avoiding liability.
- Follow the same rules and standards of conduct expected on campus.

Summary

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Key Takeaways

You should now:

- 1 Understand the definition of "duty of care" and how it relates to your responsibility for the participants in your program
- 2 Be familiar with the most common legal claims arising out of faculty-led study abroad programs
- 3 Be aware of best practice risk mitigation strategies pre-departure and while abroad

[CONTINUE](#)

Quiz



Please answer the questions below.

Question

01/03

In a negligence action, a participant claims that the University breached its _____ .

- Duty of care
- Responsibility
- Legal promise
- Contract

Question

02/03

True or False? From a legal standpoint, a faculty or staff member leading a study abroad program is expected to protect students from all types of risk.

True

False

Question

03/03

The best practices for risk mitigation are to identify, communicate and _____?

- Analyze
- Respond
- Document
- Conceal



Thank you for completing this module. Please close this window to go to the next module.