Preliminary research completed by Kristin Herrick, MFS

In summary, I think UHM's Student Conduct Code is written broadly enough to apply to student conduct abroad, though it may expose UHM to a potential lawsuit because it doesn't specifically mention study abroad and leaves sole discretion to the Senior Student Affairs Officer to decide when the Code applies outside UH. In my view, the following could be done to strengthen it (1) Amend the definition of students to specifically include students studying abroad (like Colorado State); (2) Amend the jurisdiction to specifically include study abroad programs (not done in the two peers I looked at likely because it's written broad enough as is); (3) require consultation with the Council on Study Abroad (or Director of Study Abroad) for student misconduct occurring abroad (like Oregon State); (4) Require all students to sign a contract before being admitted / leaving for Study Abroad that specifically states that they are subject to the UHM Student Conduct Code while abroad, describes any additional conduct codes / international laws they are required to follow (i.e. are they also subject to the foreign institutions conduct code? Can they now drink if under 21?), and dictates an abbreviated due process procedure for alleged student misconduct abroad (since they would not have access to the existing UHM due process procedures because they're away.) I wasn't able to pull Study Abroad's paperwork / contracts it provides to students online (I'm sure they must have something like this.)

UHM STUDENT CONDUCT CODE

A. Jurisdiction of the UH Student Conduct Code: The UH Student Conduct Code shall apply to conduct that occurs on UH premises, at UH sponsored activities, in distance/on-line courses and events,* and to off-campus conduct that affects the UH Community and/or the pursuit of its objectives.* Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree. Conduct that occurs before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if his/her conduct is not discovered until after a degree is awarded), is subject to the Student Conduct Code. The Student Conduct Code shall apply to a student's conduct even if the student withdraws from school or a particular course while a disciplinary matter is pending. The Senior Student Affairs Officer shall decide whether the Student Conduct Code shall be applied to conduct occurring off campus, on a case-by-case basis, in his/her sole discretion.

PEER STUDENT CONDUCT CODES (2)

*The language with ** in bold above is included in both Colorado State and Oregon State's student conduct code. Oregon State mandates consultation with the director of international programs, if appropriate, so it seems clear that they view the policy as applying to such programs. Colorado State specifically defines students to include the following "The Student Conduct Code applies to all Colorado State University students enrolled through University programs who are studying abroad or at other remote locations, including the Denver campuses." Neither UHM (or Oregon State) define "students" to specifically include those studying abroad (though it could be inferred from other language).

UHM STUDENT GRIEVANCE AVENUES

An Equal Opportunity/Affirmative Action Institution
ARE UNIVERSITIES LIABLE FOR STUDENT MISCONDUCT ABROAD? (YES - unless we advise them otherwise, but we can mitigate our exposure to liability by following some simple steps.)

Student Misconduct
The duty to advise must clearly cover behavior and conduct expectations of students. Depending on program sponsorship, a student should know if he/she is accountable to home-campus conduct and disciplinary standards, or does the sponsoring agency supplant home-campus policies? Furthermore, it must be clear as to the expectations for “off-campus” conduct while participating on an international program. What is considered “off-campus” while on a program abroad: is the program housing off-campus, are group meals considered off-campus, and is weekend travel considered off-campus? An example of a U.S. campus issue is alcohol consumption in the students’ residence. Some campus residences may have rules prohibiting alcohol consumption, yet public institutions would not expect to prohibit alcohol consumption in off-campus apartments (some private institutions do have general alcohol consumption policies and attempt to prohibit it at any time on and off campus). Thus, is sponsor-provided housing on an international program considered on or off-campus? Due process is another issue that is sometimes blurred on a Study Abroad program. It is fairly uncommon to have qualified staff to investigate student misconduct allegations, and provide due process that is expected on the home campus. Thus, it must be clearly stated that students will either waive due process or experience an abbreviated version of due process in academic and/or conduct issues while abroad. Students should also be informed if they will face home-campus disciplinary sanctions for conduct infractions while abroad. If there are exceptions to home-campus conduct (particularly drinking age), students should understand the policies as they apply to study abroad. Students should be informed that they are subject to local and host country laws and should not assume that those laws are the same as U.S. laws (especially regarding public intoxication, traffic offenses, drug possession, use and sales, and sexual misconduct).

Summary
Legal liability is created by the violation of duties imposed by the 1) common law, 2) statutory law (state and federal), and 3) contract law. And despite the complexities of the law there are some fundamental precepts that can protect an institution involved in study abroad: 1. assume there is a duty to act reasonably and foresee and limit the exposure to risks which are known or should be known, and act accordingly.2. make certain that all substantive aspects of programs are fully described in writing and that program participants receive, and understand all of the materials. 3. prepare and use an assumption of risk document appropriately. 4. ensure that all participants possess adequate insurance for every reasonable contingency.

Source: Legal Liability relevant to Study Abroad © 2008, Dr. Sandi M. Smith Director of Institutional Relations, Global Learning Semesters, Inc.

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