Tourism Law and Legislation

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Lecture 6

Tourism Contracts and Distribution of Tourism Services

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Lecture Overview

1. What is a tourism contract?
2. Contract formation
3. Rights and obligations of contracting parties
4. Travel agencies and tour operators
5. Distribution channels in tourism
6. Intermediaries
7. Online travel agencies
8. Booking conditions and cancellation policies
9. Case study: An online hotel booking dispute between a tourist, hotel and online travel agency

Learning Outcomes

By the end of this session you should be able to:

- Define a tourism contract and identify its main types
- Explain how tourism contracts are formed, offline and online
- Describe the rights and obligations of travellers and suppliers
- Distinguish travel agents, tour operators and other intermediaries
- Assess the legal issues raised by online travel agencies and cancellation policies

Topic 1

What is a tourism contract?

Every booking, however small, is a legal agreement.

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Defining a Tourism Contract

1. **Object:** A tourism service: travel, a stay, an experience
2. **Parties:** Usually a consumer and a business, often across borders
3. **Timing:** Paid in advance, performed later and elsewhere
4. **Information gap:** The traveller cannot inspect what they buy
5. **Mandatory protection:** Consumer law limits what the business can exclude

Types of Tourism Contracts

Accommodation

Hotel, apartment or campsite stays

Carriage

Air, rail, coach and sea travel

Package travel

Two or more services combined

Agency and intermediation

Arranging travel on behalf of others

Car hire

Rental vehicles at the destination

Excursions and activities

Tours, tickets and experiences

The Legal Framework

Layer	Examples	What it does
General contract law	German BGB, Spanish Civil Code, English common law	Formation, performance, breach
EU consumer law	Consumer Rights Directive 2011/83/EU; Unfair Terms Directive 93/13/EEC	Information, fairness, mandatory rights
Tourism-specific rules	Package Travel Directive (EU) 2015/2302; passenger rights	Special duties and remedies
Cross-border rules	Rome I (593/2008); Brussels Ia (1215/2012)	Which law applies; where to sue

Topic 2

Contract formation

When does a booking become binding?

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Essential Elements of a Contract

Offer

A clear proposal ready to be accepted

Acceptance

Unconditional agreement to the offer

Consideration or cause

Something given in return, such as the price

Intention

Both sides mean to be legally bound

Capacity

Parties able to contract, e.g. adults

Certainty

Terms clear enough to enforce

Offer or Invitation To Treat?

- A website price is usually an invitation to treat
- The customer's booking is the offer
- The confirmation may be the acceptance
- Obvious pricing errors can often be refused
- Careful wording of confirmations protects businesses

Making Contracts Online

- Clear information before the booking (CRD Art. 6)
- Final button must say the order means paying
- Order acknowledged without delay (e-Commerce Directive)
- Confirmation on a durable medium, such as an email
- Hidden charges added later are not binding



Terms and Unfair Terms



Incorporation

- Terms must be available before booking
- Clear and in plain language
- Surprising terms need special emphasis
- Ambiguity is read against the business



Unfair terms (Dir. 93/13/EEC)

- Significant imbalance against the consumer
- Not binding on the consumer
- Example: fees far above actual loss
- Example: business may change price at will

Topic 3

Rights and obligations of contracting parties

Two sides of the same booking.

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Obligations of the Supplier

- Provide the service as described and agreed
- Give accurate information before and after booking
- Respect health, safety and hygiene rules
- Take reasonable care of guests and their belongings
- Treat personal data lawfully

Obligations of the traveller

1. **Pay:** The agreed price, on time
2. **Provide accurate details:** Names, dates, number of guests, special needs
3. **Follow reasonable rules:** House rules, safety instructions, check-in times
4. **Take care:** Avoid damage to property and nuisance to others
5. **Report problems promptly:** Give the supplier a chance to put things right

Remedies When Things Go Wrong

Performance

Fix the problem or provide the service

Price reduction

Pay less for a lesser service

Damages

Compensation, including loss of enjoyment

Termination

End the contract for serious breach

Topic 4

Travel agencies and tour operators

Who sells the trip, and who answers for it?

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Travel agent or tour operator?



Travel agent

- Sells services of other businesses
- Usually acts as an intermediary
- Earns commission or fees
- Liable for its own mistakes and advice



Tour operator

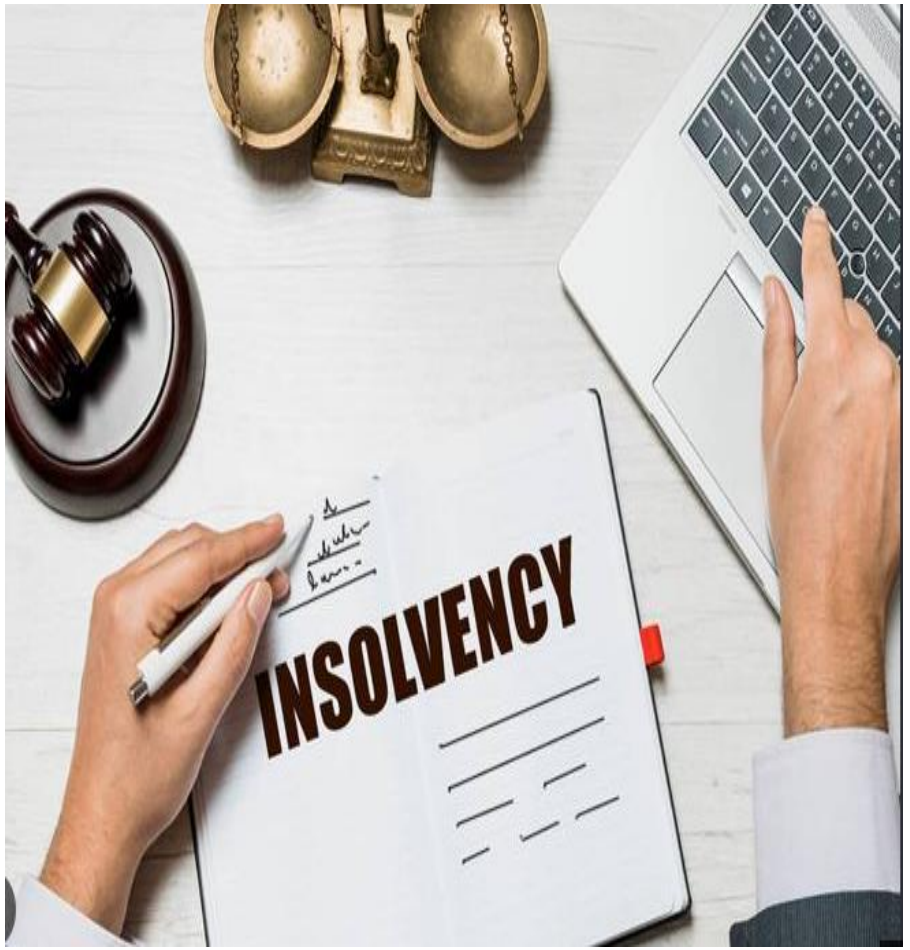
- Combines services into its own product
- Sells in its own name
- Earns a margin on the package
- Liable for the whole package

Organiser and Retailer Under EU law

1. **Organiser:** Combines and sells packages; liable for performance
2. **Retailer:** Sells or offers packages put together by an organiser
3. **Package:** Two or more types of travel service for the same trip
4. **Linked travel arrangement:** Lighter protection when services are booked separately but linked
5. **Booking errors (Art. 21):** A trader is liable for technical errors in its booking system

Protection Against Insolvency

- Organisers must protect prepayments against insolvency
- Repatriation must be covered where transport is included
- Thomas Cook (2019): around 140,000 travellers flown home
- Germany set up a new travel security fund in response
- Check licences and protection schemes before booking



Duties of Travel Agents

Accurate information

Products, prices, visas and health rules

Correct bookings

Right names, dates and services

Passing on messages

Changes and complaints between the parties

Care and loyalty

Act in the customer's interest

Topic 5

Distribution channels in tourism

How a hotel room or a seat reaches the traveller.

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Direct and Indirect Distribution

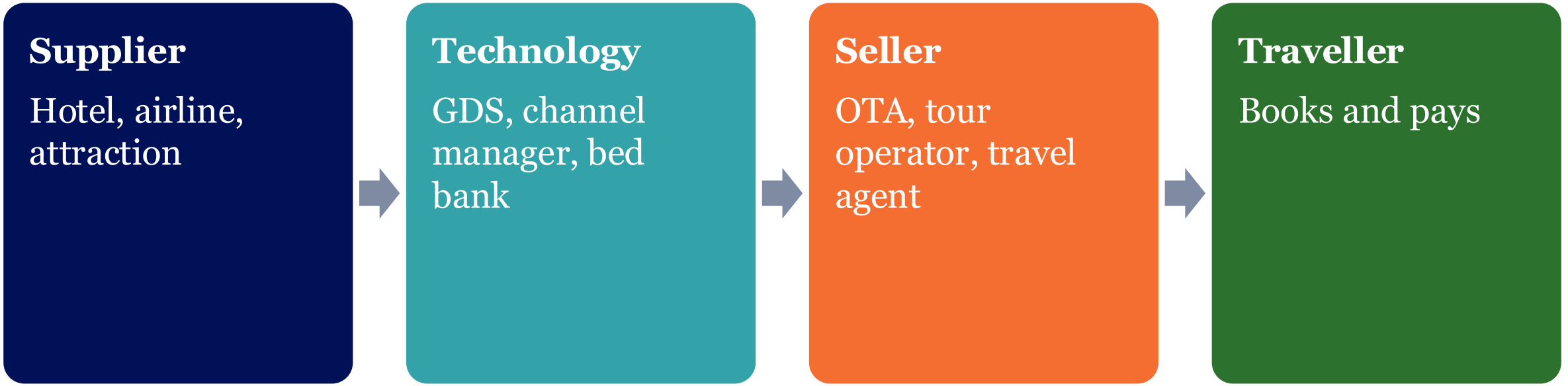
Direct

- Own website, app, phone or front desk
- No commission to pay
- Supplier owns the customer data
- Harder to reach new markets

Indirect

- OTAs, tour operators, travel agents
- Wide reach and strong marketing
- Commission often 15–25%
- Less control over price and data

The Distribution Chain



Metasearch sites, such as Google Hotels or Trivago, compare prices and send traffic to sellers.

GDS: global distribution system, e.g. Amadeus, Sabre, Travelport

Choosing the Channel Mix

- Cost: commission, fees and marketing spend
- Control: prices, conditions and brand
- Data: who owns the customer relationship
- Risk: dependence on one dominant platform
- Contracts: rate, availability and parity terms

Topic 6

Intermediaries

The businesses in the middle, and the law that governs them.

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Types of Intermediaries

GDS

Global systems linking airlines, hotels and agents

Bed banks

Wholesale hotel rooms for other sellers

DMCs

Local ground handling at the destination

Metasearch

Compare prices and send traffic

Channel managers

Sync rates and availability

Affiliates

Earn commission by referring sales

Whose agent is the intermediary?

1. **Agent of the supplier:** Contract is made with the hotel or airline
2. **Seller in its own name:** The intermediary may be the contracting party
3. **Agent of the traveller:** Owes the traveller care and loyalty
4. **Clear disclosure:** The customer must know who the contracting party is
5. **Own liability:** For errors, wrong information and booking mistakes

Rules for Platforms and Businesses

Platform-to-Business Reg.

- Clear terms and notice of changes
- Explain main ranking parameters
- Reasons when an account is suspended
- Internal complaint handling and mediation

Omnibus Directive

- Say who the consumer contracts with
- Disclose paid ranking
- Explain how reviews are checked
- Fines up to 4% of turnover in some cases

Topic 7

Online travel agencies

A few large platforms now shape how much of the world books travel.

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The OTA Market

- Booking Holdings and Expedia Group lead the market
- Huge reach, strong brands, heavy advertising
- Commission typically 15–25% per booking
- Ranking and reviews steer traveller choices
- Small hotels often depend on one platform



Agency and Merchant Models

	Agency model	Merchant model
Who takes payment?	Usually the hotel	The OTA
OTA income	Commission from the hotel	Margin between net and selling price
Contract with guest	Usually the hotel	Can involve the OTA directly
Typical examples	Booking.com (traditionally)	Expedia (traditionally)

Many OTAs now use both models side by side

Parity clauses and competition law



Under the Digital Markets Act, Booking.com may no longer use parity clauses anywhere in the EU.

OTAs and Consumer Protection

Pressure selling

False scarcity and countdown messages

Drip pricing

Fees added late in the booking

Reviews

Platforms must explain how reviews are checked

Enforcement

Fines, orders and coordinated EU action

Topic 8

Booking conditions and cancellation policies

The small print that decides who pays when plans change.

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Common Booking Conditions

Flexible rate

Free cancellation up to a set time

Non-refundable

Lower price, no money back

Deposit

Part payment held against cancellation

No-show rule

Charge if the guest fails to arrive

No 14-day right to cancel

1. **No withdrawal right:** Dated tourism services are excluded (CRD Art. 16(l))
2. **Cancellation follows the contract:** Whatever was agreed and shown before booking
3. **No-shows:** The hotel may charge, minus costs it saves
4. **Duty to mitigate:** The hotel should try to resell the room
5. **Unfair fees:** Fees far above actual loss may be struck out

Unavoidable events and vouchers

Package travel

- Free cancellation for unavoidable circumstances
- Full refund within 14 days
- Organiser may also cancel and refund
- Vouchers only if the traveller agrees

Hotel-only bookings

- Depends on contract and national law
- Force majeure or frustration may end the contract
- Travel bans can make performance impossible
- Insurance can fill the gaps

Topic 9

Case study: An online hotel booking dispute between a tourist, hotel and online travel agency

Three parties, one booking, and a charge nobody expected.

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The scenario

Elena, a tourist from Madrid

She books three nights at a Berlin hotel through an OTA (agency model). The listing says "Free cancellation until 24 hours before arrival".

The hotel's own system loads the booking as a non-refundable rate.

Elena cancels five days ahead. The hotel charges her card €540.

Question: who is responsible, and what can she do?

Analysing each party's position

Party	Position	Likely outcome
Elena (tourist)	Relied on the terms shown at booking	Entitled to a full refund
Hotel	Contract made through its agent, the OTA	Bound by the terms displayed
OTA	Showed conditions that did not match	Liable to the hotel; consumer law risk

- Elena can sue in Madrid and rely on Spanish consumer law (Brussels Ia, Rome I)
- Her card issuer may reverse the charge (chargeback)

Resolution and Discussion

Steps for Elena

1. Keep screenshots of the listing
2. Complain to the OTA and hotel in writing
3. Ask her bank for a chargeback
4. Use consumer ADR or the courts

Discuss in groups

- Would the answer change under the merchant model?
- How should hotels and OTAs prevent mismatched terms?
- Should OTAs be liable alongside hotels by law?

Key takeaways

- Every booking is a contract, usually a consumer contract
- The terms shown before booking bind the business
- Agents, organisers and retailers carry different liability
- OTAs face competition and consumer law scrutiny
- There is no general 14-day right to cancel dated services

Learning References

- Directive 2011/83/EU on consumer rights; Directive 93/13/EEC on unfair terms in consumer contracts.
- Directive (EU) 2015/2302 on package travel and linked travel arrangements.
- Regulation (EU) 2019/1150 (platform-to-business) and Directive (EU) 2019/2161 (Omnibus).
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- CJEU: Leitner (C-168/00, 2002); Booking.com v 25hotels (C-264/23, 2024).
- CNMC (2024) Resolution fining Booking.com €413 million. Madrid: CNMC.

Thank you

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