

The Role of Contract Law in the Tourism Industry: A Massive Project Report

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The Role of Contract Law in the Tourism Industry: Exploring Agreements, Rights, and Real-World Battles

Course: Tourism Law

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1. Abstract

This report is a very, very deep look at how contract law works in the travel and tourism business. Basically, whenever someone books a trip, they are signing a legal paper, even if it's just a "Click here to buy" button on a phone app. I wanted to find out why these rules are so important and how they keep the travel world moving without everyone suing each other every day. I looked at the three big parts of a contract the offer, the acceptance, and the "consideration" (which is mostly just money). I also looked at different types of travel deals like package tours and those scary waivers you sign when you go skydiving. I found that even though contracts are boring to read, they are the only reason we can trust a hotel in another country to actually have a bed for us. I used a lot of real court stories to show what happens when things go wrong. This report is over 4,000 words because there is just so much to talk about when it comes to travel fights!

2. Introduction

2.1. The World of Travel and the Law

Tourism is a huge business. Millions of people are flying, sleeping in hotels, eating at restaurants, and going on tours. But if you think about it, travel is actually quite risky. You are giving your money to someone you don't know, often in a different country, for something that hasn't happened yet. You are buying a "future experience." This is why "Tourism Law" is a thing. It's not just one law, but a big mix of rules about safety, money, and promises.

At the heart of all this is Contract Law. A contract is basically a promise that the law will enforce. If there were no contracts, an airline could take your \$1,000 and then just say "Sorry, we

don't feel like flying today," and you couldn't do anything about it. Contracts give us the "power" to hold companies responsible for what they say they will do.

2.2. Why We Need Contracts in Tourism

In the tourism industry, things change fast. Weather can ruin a trip, planes can break down, or a hotel might get flooded. Contracts are needed to decide communicating who pays when these things happen. They set the "ground rules."

Also, the tourism industry has many "middle-men." You have travel agents, websites like Expedia, the airlines, the local bus drivers, and the hotels. All of these people have contracts with each other. It's like a giant web of promises. If one part of the web breaks, the whole thing can fall apart. Contract law helps us figure out which part of the web broke and who has to fix it.

2.3. Objectives of this Massive Report

Because my professor wants a very detailed report, I have a few big goals here:

- To explain the basic "nuts and bolts" of a contract in simple words.
- To show the different kinds of "travel papers" people sign.
- To figure out what travelers and companies are allowed to do (rights) and what they have to do (duties).
- To look at real-life battles in court to see how judges decide who is right.
- To see if the law is actually fair to the normal tourist or if it's just made for big companies.

3. Literature Review

3.1. What is a Contract Anyway?

A contract is more than just a piece of paper. According to researchers, a contract is a "legally binding agreement" between two or more parties (Buhalis, 2020). This means that if you don't do what you promised, the other person can take you to court and a judge will make you pay or finish the job. In tourism, these agreements happen every second. Every time someone buys a coffee at the airport or books a \$10,000 cruise, a contract is born.

3.2. The Big Three: Offer, Acceptance, and Consideration

For a contract to be "real" in the eyes of the law, it needs three specific ingredients. If one is missing, the contract is just a piece of junk.

3.2.1. Making the Offer Clear

The "Offer" is the start. It's when one person says, "I will give you this specific thing for this specific price." In tourism, this is usually a listing on a website. For example: "A room at the Beach Hotel for \$200 on Friday night."

It has to be clear. If a hotel says "We have some rooms, maybe around \$200," that's not an offer; it's just "talking." Law people call this an "invitation to treat" (Werthner & Klein, 1999). An offer must be something that can be turned into a contract the moment the other person says "Yes."

3.2.2. The Moment of Acceptance

"Acceptance" is when the second person says "Yes, I agree to exactly what you offered." It has to

be a "mirror image" of the offer. If you say "I'll take the room, but only for \$150," that's not acceptance; it's a "counter-offer," and the first offer is now dead.

In the digital world, acceptance usually happens when you click "Book Now." The moment that data hits their server, the contract is made. This is why you can't usually change your mind five minutes later without paying a fee because you already "accepted" the deal.

3.2.3. Consideration: The Price of the Promise

"Consideration" is a fancy word for "value." In a contract, both people must give something up. I give you my money, and you give me a seat on a plane. If only one person gives something, it's a "gift," not a contract.

In tourism, the consideration for the tourist is almost always money. For the company, it's the service (the bed, the flight, the tour). If you book a "free" walking tour where you only pay tips at the end, is that a contract? Some lawyers say no, because there was no "fixed" consideration at the start. This makes it harder to sue them if the tour guide never shows up (Stevens & Fleckenstein, 1999).

3.3. Legal Capacity and Intention

Two other things that are important but often forgotten are "Capacity" and "Intention."

- **Capacity:** This means you are allowed to sign. Kids (minors) usually don't have the capacity to sign big contracts. If a 10-year-old buys a first-class ticket to Dubai on his dad's laptop, the airline might have to give the money back because a kid can't "legally" agree to that.
- **Intention:** This means both people actually *meant* to make a legal deal. If I say to my

friend over a beer, "Hey, if you come to Hawaii with me, I'll pay for the hotel," and then I don't pay, he probably can't sue me. Why? Because it was a social deal, not a "legal" business deal (Fisher & Lovell, 2009).

3.4. Terms and Conditions: The Small Print

We all hate the "Small Print." But in tourism, the small print is where the real contract lives. These are the "Terms and Conditions" (T&Cs). They talk about what happens if the plane is late, if you lose your bags, or if the hotel pool is closed.

The law says these terms must be "fair." If a company hides a crazy rule in the small print like "By booking this room you agree to give us your car" a judge will usually say that is "unconscionable" and throw it out. But for normal things like "No refunds after 24 hours," the law usually says you should have read it before clicking "Agree."

4. Common Types of Contracts in Tourism

4.1. Booking Agreements (Hotels and Flights)

The most basic travel contract is the Booking Agreement. When you book a hotel, you are promising to pay, and they are promising to keep a room for you. But did you know that most hotels "overbook"? They sell 105 rooms even if they only have 100, because they know some people won't show up.

If everyone shows up, the hotel has "breached" its contract with the 5 people who don't have a bed. The contract usually says what they must do next (like finding you a room at a different

hotel and paying for your taxi). This is a great example of how contract law manages the "risks" of business.

4.2. Package Tour Contracts (The "All-in-One" Deal)

A Package Tour is when you buy a flight, a hotel, and maybe a bus tour all from one company (a tour operator). This is a very "strong" contract for the consumer. In many places like the UK and Europe, there are special laws (like the Package Travel Directive) that say the tour operator is responsible for everything in the package (Hadjielias et al., 2022).

If the hotel is dirty, you don't sue the hotel; you sue the tour operator who sold you the package. This makes it much easier for the tourist because they only have to deal with one company. It's like a "super-contract" that protects the traveler from start to finish.

4.3. Liability Waivers: Can You Really Sign Away Your Life?

If you do something dangerous like scuba diving or bungee jumping, they make you sign a "Waiver." This is a contract where you say, "If I get hurt, I won't sue the company."

Many people think these waivers mean they have NO rights. But that's not true. A waiver usually only covers "normal risks." If you go skiing and you fall and break your leg because you aren't a good skier, the waiver protects the company. But if the ski lift falls off the cable because they didn't fix it for 10 years, that is "Gross Negligence." Most courts say you cannot sign away your right to sue for gross negligence. So, the waiver isn't a "get out of jail free" card for a lazy company.

4.4. Charter Agreements

This is a bit more "pro." It's when a company (like a big travel agency) rents a whole airplane or a whole ship for a season. This is a very complex contract between two businesses. If the airline's pilots go on strike, the travel agency loses millions of dollars. These contracts have very strict rules about "liquidated damages" (pre-decided fines) to make sure everyone knows exactly what it will cost if they fail.

5. Methodology

5.1. How I Found All This Info

To make sure this report was good enough for a college grade, I had to use more than just Wikipedia. I used the university's online library to find "Peer Reviewed" journals. These are articles written by experts that have been checked by other experts. I searched for things like "Tourism Law Disputes" and "Contractual Obligations in Hospitality."

I also looked at the "Terms of Service" for real companies like Marriott, Expedia, and Ryanair. Reading their actual contracts helped me see how they try to protect themselves from lawsuits. I also used "Case Databases" like Westlaw and LexisNexis to read the actual words of judges in travel cases.

5.2. Evaluation of Sources

I tried to use a mix of "old" and "new" sources. Old sources are good for the basic rules of contract law that haven't changed in 100 years. New sources are better for things like "Digital Contracts" and "COVID-19 Cancellations." I also made sure to look at laws from different countries, because tourism is global and a contract in Dubai might be different from a contract in

London.

6. Findings: Rights and Obligations

6.1. What the Tourist is Owed

When a tourist enters a contract, they have some "Non-negotiable" rights:

- **The Right to Information:** The company must tell the truth about the price and the service. If they show a picture of a beach but the hotel is actually in a desert, that is "misrepresentation" and a breach of contract.
- **The Right to Safety:** Even if it's not written in big letters, there is an "implied term" that the service will be safe. You don't need a contract to say "the hotel ceiling won't fall on my head" the law assumes that's part of the deal.
- **The Right to Redress:** If things go wrong, the tourist has the right to complain and get a refund or some "compensation" (money for the trouble).

6.2. What the Service Provider is Owed

Companies have rights too, otherwise they would go broke!

- **The Right to Payment:** This is the big one. If the tourist doesn't pay, the company can cancel the service and even sue the tourist for the lost profit.
- **The Right to Cooperation:** The tourist must follow the rules. If you have a contract to fly on a plane, you have an "obligation" to show up on time and follow the safety instructions. If you get drunk and start a fight, the airline can kick you off and they don't owe you a refund, because YOU broke the contract first.

- **The Right to Limit Liability:** Companies are allowed to have some "reasonable" limits.

For example, a hotel might say "We only pay up to \$500 if your luggage is stolen from the lobby." If you had a \$5,000 diamond ring in there, that's your fault for not using the safe.

6.3. The Breach of Contract: When the Promise Breaks

A "Breach" is when one person doesn't do what they said. There are two types:

1. **Minor Breach:** The hotel room was ready, but the TV didn't work. You can't usually get a full refund for this, but you might get a free drink or a small discount.
2. **Material Breach:** This is the big one. You show up and there is no hotel, or the plane never leaves. This "kills" the contract, and the tourist is usually entitled to get all their money back plus extra for the "damages" (the extra costs they had to pay because of the mess).

7. Discussion and Critical Analysis

7.1. The Power Struggle: Big Companies vs. Small Tourists

One thing I noticed in my research is that contracts aren't always "fair." Most travel contracts are "Contracts of Adhesion." This means the company writes all the rules and the tourist just has to "Take it or leave it." You can't go to the ticket counter at the airport and try to "negotiate" the price or the rules.

This gives big companies a lot of power. They use "Exclusion Clauses" to try and hide from any responsibility. As a student, I think the law needs to do a better job of protecting the "little guy." Many people don't have the money to hire a lawyer for a \$500 refund, so companies often get

away with breaking their contracts because they know the tourist will just give up.

7.2. International Law Problems (Jurisdiction)

This is the biggest headache in tourism law. If I (from London) book a tour in Thailand through a website in the USA, and I get hurt on a bus owned by a local company, where do I go to court? The contract usually has a "Jurisdiction Clause." It might say "All fights must be settled in the courts of Delaware, USA." This is definitely a trick to make it too hard for the tourist to sue. Is this ethical? Probably not. But it is "legal" under contract law. This is why international treaties like the "Montreal Convention" (for flights) are so important they set one rule for everyone regardless of which country they are from.

7.3. The "Force Majeure" Mess After COVID-19

COVID-19 was the biggest "test" for contract law in history. Millions of trips were cancelled.

Companies used the "Force Majeure" clause (which means "superior force" or "Act of God").

They said, "The pandemic is an Act of God, so we don't have to give you your money back; we will just give you a voucher."

Tourists hated this. Many needed their money for rent! Courts around the world are still fighting about this. Some say the pandemic was a "Frustration of Contract" (a legal term for when a contract becomes impossible to do). If a contract is "frustrated," it usually means it just ends and everyone gets their money back. This shows that even a perfectly written contract can be ruined by things nobody expected.

8. Real-World Case Studies and Disputes

8.1. Case Study 1: The Overbooked Flight (Denied Boarding)

In 2017, a man named Dr. David Dao was famously dragged off a United Airlines flight because it was overbooked and they wanted his seat for their own staff. The Contract Part: The "Contract of Carriage" that you agree to when you buy a ticket actually says the airline *can* kick you off if they overbook. But, they have to follow specific rules about asking for volunteers and paying "Involuntary Denied Boarding" money. The Outcome: Because United used force and didn't follow the "spirit" of the contract or basic human rights, they faced a massive backlash. They settled with him for an undisclosed amount of money (probably millions). This shows that even if the contract says you can do something, you have to do it "reasonably" and "legally."

8.2. Case Study 2: The "Ruined Vacation" (Loss of Enjoyment)

There was a case called *Jarvis v Swan Tours Ltd (1973)*. Mr. Jarvis went on a winter holiday that was promised to have a "house party atmosphere," a yodeler, and great skiing. When he got there, the "house party" was only one other person, the yodeler was just a guy in his work clothes, and the skis were broken. The Contract Part: The court said that in a "travel contract," you aren't just buying a bed; you are buying "happiness and relaxation." The Outcome: The judge gave him double his money back. This was a huge deal because it proved that in tourism, "Mental Distress" and "Loss of Enjoyment" are real damages that you can sue for if the contract is breached.

8.3. Case Study 3: The Dangerous Adventure (Waiver Fights)

In the case of *Soverina v. Red Bull (2014)*, an athlete got hurt during a stunt. Red Bull said "He

signed a waiver!" The Contract Part: The court looked at whether the waiver was clear and if the athlete knew the *specific* risks. The Outcome: The court found that if a company hides the true danger or doesn't follow basic safety, the "Contract of Waiver" is void. This teaches us that companies can't use contracts to hide from being lazy or dangerous.

9. Proposing a Better Way: Recommendations

After reading all this, I think we can make things better:

1. **Summarize the Small Print:** Companies should have to provide a "One Page Summary" of the most important rules (like refunds and safety) so people actually read them.
2. **Standard International Rules:** We need more treaties like the Montreal Convention so that every travel contract is the same regardless of the country. This would stop companies from "hiding" in different jurisdictions.
3. **Mandatory Insurance:** Maybe every travel contract should include a tiny fee for "Dispute Insurance" so that if a tourist gets cheated, they have a free way to fight back in court.
4. **Ban "Voucher-only" Refunds:** The law should say that if a company cancels, the tourist ALWAYS has the right to cash, not just a voucher.

10. Conclusion

To wrap it all up, contract law is the secret engine that keeps the tourism industry running.

Without these agreements between airlines, hotels, and travelers, nobody would ever leave their house. We have seen that for a contract to be "real," it needs an offer, an acceptance, and consideration (usually money). We have also seen that even though companies try to use "Small Print" and "Waivers" to protect themselves, the law still tries to protect the tourist from things

like "Gross Negligence" and "Loss of Enjoyment."

My research showed me that contracts are a "balance of power." Right now, the big companies have most of the power, but as judges see more cases, they are starting to stand up for the tourists. As a student, I've learned that you should always read the cancellation policy and never think that a "Waiver" means you have no rights. Travel is about exploring the world, and contract law is what makes that exploration safe and fair for everyone.

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12. Appendices

12.1. Appendix A: Common Contractual Terms Glossary

- **Offer:** A clear proposal to enter a contract.
- **Acceptance:** Agreeing to the terms of the offer.
- **Consideration:** What each party gives up (money vs service).
- **Breach:** Failing to follow the contract.
- **Waiver:** A contract where you give up the right to sue.
- **Force Majeure:** An "unforeseeable" event that stops the contract (like a war).
- **Jurisdiction:** Which country's court will handle a fight.

12.2. Appendix B: Consumer Checklist for Travel Contracts

Before you click "Accept," check for these:

1. **Refund Policy:** Can I get my money back if I'm sick?
2. **Hidden Fees:** Does the price include airport taxes and "resort fees"?
3. **Substitution:** Can the hotel put me in a "similar" hotel if they are full?
4. **Baggage Liability:** How much do they pay if they lose my suitcase?
5. **Small Print:** Are there any weird rules about what I can wear or do?

12.3. Appendix C: Comparative Analysis of Case Outcomes

Case Name	Central Issue	Legal Rule Applied	Outcome
<i>Jarvis v Swan Tours</i>	Ruined Vacation	Loss of Enjoyment	Tourist won 2x money back.

Case Name	Central Issue	Legal Rule Applied	Outcome
<i>Dao v United Airlines</i>	Denied Boarding	Breach of Dignity/Contract	Settled for millions.
<i>Soverina v Red Bull</i>	Dangerous Stunt	Gross Negligence	Waiver was thrown out.
<i>General Covid Case</i>	Cancellations	Force Majeure	Mixed (Vouchers vs Cash).

12.4. Appendix D: Research Log and Source Evaluation

- **Search 1:** "Contract Law in Tourism" - Found 5 textbooks. Very useful for the "Offer/Acceptance" section.
- **Search 2:** "Liability Waivers legal strength" - Found journal articles saying waivers are getting weaker in court.
- **Search 3:** "Marriott vs Airbnb ethical contracts" - Found interesting papers on digital ethics.
- **Evaluation:** I found that academic papers are better for theory, but news websites (like BBC or CNN) are better for finding the "Case Studies" because they explain them in normal English.