

MAKERERE UNIVERSITY BUSINESS SCHOOL
FACULTY OF COMMERCE, DEPARTMENT OF BUSINESS LAW
BACHELOR OF TRAVEL AND TOURISM MANAGEMENT YEAR III
TOURISM AND TRAVEL LAW (BTT3240)
2023/2024 SEMESTER TWO

TOPIC 5- TRAVEL AGENCY

Introduction

The travel industry is comprised of the following four groups namely:

1. suppliers of travel services such as hotels, resorts, airlines and other types of transportation;
2. travel wholesalers that combine the services offered by suppliers into “package tours”;
3. travel agents who sell both package tours and services of individual suppliers; and
4. the travelers¹.

Overview of the law of agency

- **Definition of the contract of agency:** A person known as principal authorizes another called agent, to act on his behalf with third parties and occasion binding contracts.
- **Ways of creating agency:**
 - By express agreement whether written or oral
 - By conduct or implication or operation of law-such as by estoppel, employment, e.t.c;
 - By necessity, when the agent is in possession of the principal’s property, the property is in danger of getting destroyed and the agent tries all possible means to obtain the principal’ instructions in vain. Then the agent can dispose of the property, trying as much as possible to act in the principal’ interests.
- **Types of agents:** Universal (worldwide, eg head of state), general, special (eg lawyers) and mercantile agent (engaged in sale of goods); agents by law (administrators, employees, spouses);
- **Types of principals:** Named principal (particulars), Disclosed principal (existence made known) and undisclosed principal (neither name nor existence disclosed).
- **Duties of the agent:**
 - Obedience, save illegal and ambiguous instructions;
 - Duty to account for all income received on behalf of the principal;
 - Good faith-not to allow personal interest to conflict with the principal’s eg competing business;
 - Not to make secret profit
 - Personal performance: a delegate does not delegate (delegatus non-potest delegare) except where custom warrants, ministerial functions are delegatable, express or implied power to delegate.
 - Duty to communicate and keep the principal posted on every step of the progress.
- **Duties of the principal:** To remunerate the agent and to indemnify him against extra expenses
- **Rights of the agent:** Remuneration, indemnity and lien (a right to retain property of the principal until the agent’s charges are paid).
- **Liability of the agent for acts done on behalf of the principal**

The general rule is that when an agent acts on behalf of the principal the principal is legally liable for the agent’ acts. The agent is not liable at all. For instance, where a travel agent arranges plane reservations for a traveler, the airline, not the travel agent, is liable to provide air transportation to

¹Norman G., et al. Hotel, Restaurant and Travel Law: A Preventive Approach, 6th ed. Delmar Publishers Inc p 414.

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the traveler. If the traveler encounters a problem before, during or after the flight, the airline is the one to answer for the faults, not the travel agent.

Exceptions:

- Where an agent acts outside the authority given to him: e.g a travel agent selling air tickets without the authority of the airline. The travel agent will be liable to the travelers for losses incurred.
 - Where an agent acts for a non-existent principal;
 - Where an agent acts in a dual capacity;
 - Where custom makes the agent personally liable.
- **Termination of agency:** by death, agreement, performance, frustration, breach and law.

Travel agency

- A 'travel agent' is defined as a business which is licensed to conduct the business of a travel agency². A travel agent normally advises travelers on most aspects of taking trips.
- A travel agent is a representative of both the traveler and the supplier of travel services and that is one unique element that distinguishes him from other agents who represent only the Principal to 3rd parties.
- So here, the travel agent serves two principals: the traveler as well as the supplier of travel services.

Duties of a travel agent:

These are categorized into three namely:

- a) Common Law duties
- b) Statutory duties
- c) Contractual duties

a) Common law duties

- **Common Law** is that body of rules that developed in England through court decisions. The courts would decide cases based on principles that were common to the different tribes and communities of England. It can be equated to some customary law principles in the African sense.
- These Common Law principles were imported to Uganda and Africa generally through colonialism because England is our former colonial master. So in Uganda we also apply common law of England where there is no statutory provision applicable to the situation at hand.
- Once common law principles are codified into statutes, they cease to be called common law. They become statutory principles.
- **Reasonable care:** A travel agent must exercise reasonable care in making a client's travel arrangements and must not intentionally mislead the client. This duty of care extends to providing **accurate** information about the intended trip, to investigate 3rd party suppliers (hotels and tour operators) and to recommending travel insurance.

² Section 2 of the Uganda Tourism Act No.2 of 2008.

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○ **Providing accurate information**

In **Burnap v Tribeca Travel**³ a man and woman purchased two return tickets from Tribeca Travel Agency which booked them on Continental Airlines. The departure time indicated on the tickets from Paris to New York was 11:00 AM. On the day of departure, the passengers arrived 10 minutes before 10:00AM only to be told that their flight had been rescheduled to 10:00AM and given the security and custom, they could not make the flight. The two called the airline two days before the day of departure to confirm their flight but the airline did not notify them of the changes. The airline had informed Tribeca Travel about the change in departure time 12 days earlier but Tribeca did not inform the passengers in turn. The two had obligations to catch up with in New York and yet Continental Airlines did not have other flights that day. They purchased one way tickets to New York and sued the travel agent, which in turn sued its agent Sofa Travel together with Continental Airlines.

Court held that the purchase of an airlines ticket creates a contract. That since the travel agent held himself out as being in the business of selling tickets and both claimants having responded and purchased the tickets, part of the contract created by the contract is being able to rely on the date and times of flight departures as they are given on the tickets. Both Tribeca and Continental Airlines were held to be responsible for the losses incurred by the two passengers.

In **Das v Royal Jordanian Airlines**⁴ a travel agent issued an airline ticket to a client for travel from New York to Calcutta. The agent handwrote “confirmed” on the ticket and yet he knew that the passenger was “wait listed”. On the departure day, the passenger was denied a seat and he sued the agent. Court held for the plaintiff, holding that the travel agent had breached a duty of care and awarded the plaintiff both the cost of the tickets and damages for emotional distress.

Investigating 3rd party suppliers

Travel agents have a duty to investigate operations of hotels, airlines and tour operators, locate material information about them that is reasonably available and disclose that information to their customers. This should be done to ensure their continued existence and their ability to provide the contracted services. If there are any known and relevant security issues, a travel agent should inform the intending traveler. Travelers are entitled to assume that travel services recommended by these agents is suitable and reliable.⁵

In **Josephs v Fuller (Club Dominic)**,⁶ a couple sued Club Dominic and a travel agent (Richards Travel Service). The travel agent recommended and arranged for the plaintiffs to spend their vacations at Club Dominic. The accommodation provided by Club Dominic was far below standard. The travel agency argued that it was not liable because it was acting on behalf of a disclosed principal. It was held that when a traveler relies on the recommendations of a travel agent and suffers damage because of accommodations so totally unacceptable that any reasonable travel agent would have known not to make such recommendations, the travel agent is liable.

³ 530 N.Y.S. 2d 926 (N.Y. 1988) reported in Norman G., et al. *ibid* p 444.

⁴ 766 F. Supp. 169 (N.Y. 1961) also reported in Norman G., et al. *ibid* p 446.

⁵ Norman G., et al. *ibid* p 446.

⁶ 451 A.2d 203 (N.J. 1982) also reported in Norman G., et al. (*ibid*) p 446.

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Similarly, a travel agent is liable to the traveler if the 3rd party supplier he recommends is closed or has already gone out of business.⁷ In **Pellegrini v Landmark Travel Group**,⁸ court held that the travel agent's contractual obligation included verifying and confirming that such tour with the enumerated components and at the stated price was actually available before he sold it.

Note that the travel agency is not always liable for 3rd party negligence and breach of contract unless the agency is partly to blame for breach of its own duty of care.

To disclose the identity of the principal

Although the general law of agency does not strictly require the agent to disclose the principal's identity, tourism and travel law does⁹. A travel agent is duty bound to disclose to the agent's clients, the identity of the persons that the agent acts for to enable the client to investigate the reputation if he so wishes. Failure of the travel agent to fulfill this duty leads to the presumption that the agent is acting on his own behalf, in which case the agent is personally liable for his acts.

In **Siegel vs Council of Long Island Educators, Inc.**,¹⁰ ten plaintiffs sued a travel agent for three (3) days of lost touring time and other inconveniences suffered during a trip to Israel caused by the agent's poor planning and failure to make reservations. The agent had disclosed that he was acting for a travel wholesaler but not the actual identity of the principal. The agent was made personally liable for the plaintiffs' claims because of his failure to disclose the principal's identity.

In **Van Rossem vs Penney Travel Service, Inc.**,¹¹ newly weds booked for a trip. The travel agent neither disclosed nor named the travel wholesaler. The couple was advised on their honeymoon departure that the wholesaler of the trip had gone bankrupt. The wholesaler had paid for their airline tickets but not the hotel. The couple nevertheless took the trip and paid their accommodation but later sued the travel agency that had arranged their trip. The travel agency was held liable for the damages occasioned.

b) Statutory Duties

- **To insure:** for the whole period of validity of his licence, a travel agent is required to maintain a policy of insurance against his or her liability for loss and damages caused to the property or the lives of the travelers¹². Mistakes and poor judgment are part of every business and 'Errors and Omissions' Insurance is recommended as liability insurance for professional negligence by travel agents. This kind of insurance covers damages and costs of lawsuits against the agency.
- **To report incidents:** a travel agent is duty bound to promptly report the death or bodily injury occasioned to any tourist under his or her charge to the Uganda Tourism Board;¹³
- **Not to vary charges** for the services offered by the travel agent without giving the Uganda Tourism Board at least 21 days of prior notice in writing.¹⁴

⁷ Barton v Wonderful World of Travel, Inc., 502 N.E. 2d 715 (Ohio 1986) (hotel closed), Grisby v O.K. Travel, 693 N.E. 2d 1142 (Ohio 1997) (tour operator) & Rodriguez v Cardona Travel Agency, 523 A.23 a. 2d 281 (N.J. 1986) (charter/airline) also reported in Norman G., et al. ibid) p 447.

⁸ Pellegrini v Landmark Travel Group, 628 N.Y.S. 2d 1003 (N.Y. 1995) also reported in Norman G., et al. ibid) p 447.

⁹ Norman G., et al. (supra) p 415.

¹⁰ 348 N.Y.S. 2d 816 (1973) reported in Norman G., et al. ibid) p 415.

¹¹ 488 N.Y.S. 2d 595 (N.Y. 1985) reported in Norman G., et al. ibid) p 415.

¹² Rule 4(d) of the Tourist Agents (Licensing) Regulations, S.I. No. 100 – 1. These regulations were saved under Section 36 of the Uganda Tourism Act, 2008.

¹³ Rule 4(e) of the Tourist Agents (Licensing) Regulations, S.I. No. 100 – 1 read together with Section 36(3) of the Uganda Tourism Act, 2008.

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- **To keep proper books of accounts** and make returns and give any other information as required by the UTB.¹⁵

c) Contractual duties of a Travel Agent

- Contractual duties are divided into two: express and implied duties
- What are implied duties?
- What are express duties?
- Discuss atleast ten implied duties of the travel agent to the traveler
- Discuss atleast ten express duties of the travel agent to the traveler and the suppliers

Disclaimers

A disclaimer is a term in the contract that excludes liability on the part of its maker. They are intended to operate as exclusion and limitation clauses. But courts do not look favourably at disclaimers by travel agents and they sometimes downplay their effect by applying stringent rules such as:

- Disclaimers do not exclude liability for negligent acts and omissions;
- The *contra preferentem rule* that exclusion clauses are applied more forcibly against their maker and in case of any ambiguity, it is resolved in favour of the passenger against the draftsman of the Disclaimer;
- Disclaimers do not bind 3rd parties i.e, one who is not a party to the contract
- Strict construction rule to the effect that the draftsman of exclusion clauses should specifically exclude that liability which he intends to exclude. General language is not sufficient;
- Illegality- that some disclaimers may be found to be contrary to statutory provisions or to public policy and that may invalidate them. If something is illegal, it cannot be made lawful through the disclaimer. A disclaimer does not cover illegalities;
- Incorporation into the contract: disclaimers, like other exclusion clauses, must be incorporated into the contract by notice, course of dealings or signature otherwise they are not part of the contract. Incorporation into the contract means that the parties to the contract must be made aware of the disclaimer before or during the time of entering into the contract, not after.

Disclaimer seen after contracting

- On receipts- Goods once sold, not returnable
- Notices inside the guest rooms
- Notices inside the vehicles/aircraft
-

Credit card fraud

What is the difference between a debit and credit card?

Many sales of airline tickets are made over the internet or on phone. Such transacts can be completed without the travel agent ever meeting the traveler face to face. Just as these e-transactions have advantages, they *have* disadvantages as well, including presenting an opportunity for unscrupulous people to perpetrate credit card fraud.¹⁶ If a credit card is used to book a flight without the

¹⁴ Rule 4(f) of the Tourist Agents (Licensing) Regulations read together with Section 36(3) of the Uganda Tourism Act, 2008.

¹⁵ Rule 4(b) & (c) of the Tourist Agents (Licensing) Regulations read together with Section 36(3) of the Uganda Tourism Act, 2008.

¹⁶ Norman G., et al. p. 457.

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authorization of the true owner and the legitimate cardholder later denies liability after receiving his monthly bill, the travel agent may be personally liable for the loss arising from the use of the credit card. The agency may not have sufficient details about the fraudulent customer and the 3rd parties (airline, hotel or card holder) may hold the travel agency liable for their losses. The travel agency has to be alert about this fraud and find ways avoiding becoming victims.

How to avoid Credit Card Fraud?

1. Bank clients are advised to use mobile wallets instead of internet websites generally which involve sharing information
2. Customers are advised to pay using cash
3. Use of strong secret codes
4. Limit personal information disclosures and posting on social media