TRAVEL LAW

Travel Law is the body of law, regional, national and international, that impacts directly and indirectly upon travellers and travel service providers. It has flexible boundaries depending upon one's[1] perspective. An academic might define its limits differently from a practising travel lawyer who in turn might look at it differently from a regulator. Much of it is the law of general application e.g. agency, contract and so forth but applied specifically to this particular industry.

However, central to any discussion of travel law are the travellers themselves and therefore a sensible starting point in this discussion would be the rights and obligations that impact directly upon travellers and exist between the traveller and

- the suppliers of travel services such as tour operators, airlines, cruise lines, ferries, bus companies, hotels and accommodation providers, tourist guides etc. and
- those who facilitate the traveller's purchase of those travel services such as travel agents, travel consultants and so forth.

These rights and obligations are to be found not only in the law of contract, tort and agency but also in industry-specific domestic statutes and international conventions. So for instance, taking the UK as an example, much of the relationship between traveller and travel service provider or travel facilitator is made up of the common law. However, laid over this common law foundation, in the form of statute, are the Package Travel Regulations (*The Package Travel and Linked Travel Arrangements 2018*[2]), which are in turn based upon the EU Package Travel Directive (*EU Directive on Package Travel and Linked Travel Arrangements 2015*[3]). These regulations confer extensive rights upon travellers and impose significant burdens upon tour operators and travel agents.

The situation is similar in Canada where each of the three most populous provinces (Ontario (*Travel Industry Act, 2002*[4]), Quebec (*Travel Agents Act*[5]) and British Columbia (*Travel Industry Regulation 2004*[6]) has a travel-specific regulatory regime that is designed to protect consumers of the services of travel agencies and tour operators. Airlines and trains are regulated federally.

International conventions which confer directly enforceable rights upon travellers include the Montreal Convention (*Montreal Convention 1999*[7]) to which the majority of nations are

signatories, which confers rights upon air passengers and the Athens Convention (*Athens Convention 1974*[8]) which confers rights upon sea passengers and to which a significant number of maritime nations are signatories.

It should be noted however that these legislative examples, as with other travel legislation throughout the world, create rules that go beyond the direct relationship between travellers and travel service providers.

With this is mind, if we look more widely we can see a regulatory framework that does not necessarily confer rights directly upon travellers but which nevertheless benefit travellers. For instance many jurisdictions impose licensing restrictions upon airlines, hotels, taxis, theatres, tourist guides, travel agents, tour operators etc. The purpose of these regulations is twofold:

- To protect the health and safety of travellers; and
- To guarantee the quality and financial stability of these suppliers and facilitators.

The Hong Kong Travel Agents Ordinance (*Travel Agents Ordinance 1985*[9]) would fall into this category. It requires travel agents to be licensed and for the establishment of a compensation fund. The fund provides for ex gratia payments to outbound travellers who suffer loss of outbound fares (commonly arising from the default of travel agents), and to outbound travellers who sustain personal injuries or death in accidents occurring during outbound activities provided or organised by travel agents.

A further example would be the Malaysian Tourism Industry Act (*Tourism Industry Act 1992*[10]) which provide for the making of regulations for the licensing of tourist guides and for establishing a code of conduct for guides.

Regulations such as these cross the boundary between conferring directly enforceable rights upon travellers and creating indirect benefits. Included in this latter category would be those laws aimed at promoting and protecting a country's cultural heritage such as theatres, museums, parks, castles, art galleries, monuments, landscapes, seashores etc. for the benefit, *inter alia*, of travellers.

Broadening the discussion further we can see statutes and regulations of a more general nature such as the rules on competition which are aimed at protecting consumers in general but which also have the effect of protecting travellers, for instance the rules on monopolies and cartels and more specifically the airline deregulation rules. In this category would also be the rules on unfair contract terms and false, misleading or deceptive practices. Examples would include the Australian Competition and Consumer Act (*Competition and Consumer Act 2010*[11]) and the South African Consumer Protection Act (*Consumer Protection Act 2008*[12])

At the outer edges of the definition would be those laws that regulate travel companies such as employment law, company law, financial regulation law and health and safety law. These laws do not impact directly upon the traveller but they do create a trading environment which is beneficial to the traveller insofar as travel companies have to comply with them.

It is also important to recognise that travel law in its widest sense frequently involves only the supplier and/or the facilitator, with the traveller on the sidelines and not at the centre of the issue. For instance disputes between tour operators and hotels concerning the standard of the facilities that the hotel has agreed to provide for the benefit of the tour operator's customers.

Note that there is some debate about whether this area of law should be called 'Tourism Law' or 'Travel and Tourism Law' rather than 'Travel Law'. We are happy to adopt the approach taken by the UNWTO that tourists and visitors are just a subset of travellers and therefore travel is an umbrella term that encompasses tourism. (*UNWTO Glossary of Terms*[13])

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[2] *The Package Travel and Linked Travel Arrangements 2018. The Package Travel and Linked Travel Arrangements 2018 No. 634.* Available at https://www.legislation.gov.uk/ukdsi/2018/9780111168479/contents (Accessed 4 January 2021)

[3] *EU Directive on Package Travel and Linked Travel Arrangements 2015. EU DIRECTIVE (EU) 2015/2302 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC* Available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2302&from=EN (Accessed 4 January 2021)

[4] *Travel Industry Act, 2002, S.O. 2002, c. 30, Sched. D.* Available at https://www.ontario.ca/laws/statute/02t30 (Accessed 6 January 2021)

[5] *Travel Agents Act Chapter A-10.* Available at http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/A-10 (Accessed 6 January 2021)

[6] *Travel Industry Regulation BC Reg. 296/2004. Available at* https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/296_2004 pursuant to https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/04002_00. (Accessed 6 January 2021)

[7] *Montreal Convention 1999. Convention for the Unification of Certain Rules for International Carriage by Air Done at Montreal on 28 May 1999*. Available at https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf (Accessed 4 January 2021)

[8] *Athens Convention 1974. Consolidated text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002 to the Convention*. Available at http://rosaeg.no/erikro/WWW/corrgr/Consol.pdf (Accessed 4 January 2021)

[9] *Travel Agents Ordinance 1985*. Available at https://www.elegislation.gov.hk/hk/cap218 (Accessed 4 January 2021)

[10] *Tourism Industry Act 1992. Laws of Malaysia. Act 482. Tourism Industry Act 1992.*Available at http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20482.pdf (Accessed 4 January 2021)

[11] *Competition and Consumer Act 2010*. Available at https://www.legislation.gov.au/Details/C2020C00352 (Accessed 4 January 2021)

[12] *Consumer Protection Act 2008. Consumer Protection Act No. 68 of 2008*. Available at https://www.gov.za/sites/default/files/gcis_document/201409/321864670.pdf (Accessed 4 January 2021)

[13] *UNWTO Glossary of Tourism Terms.* Available at https://www.unwto.org/glossary-tourism-terms (Accessed 4 January 2021)