



Safety

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Background

Both domestic and international travelers are often exposed to unique risks and dangers not common to other activities or industries. In the course of travel, direct control over the safety and welfare of travelers is effectively transferred to others (often unknown third parties). In some instances, the law imposes "strict liability" upon these third parties, whereas in other circumstances, there must be fault on the part of the third party before a traveler may recover damages for injury or harm.

However, the issue of travel safety invokes more consideration than merely the identification of potentially liable parties. Of particular concern is the myriad of complex bodies of law that affect different aspects of travel safety, e.g., maritime law, aviation law, hotel law, consumer law, etc. This is further complicated in instances of international travel, which may invoke questions of [JURISDICTION](#) and choice of law rules.

Federal and Global Protections

At the global level, one must consider the many provisions contained in international treaties and federal statutes which address issues of travel safety. Among them are the following:

- The Warsaw Convention (Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929): Among other things, this body of law governs the legal rights of international travelers to sue airlines for physical injuries or death suffered on an airliner. The amended Warsaw Convention provides that airlines have strict liability (providing an automatic entitlement without proof of fault) up to \$100,000 SDRs ("Special Drawing Rights," equivalent to approximately \$135,000 U.S. dollars).
- The Athens Convention and The Hague Convention.
- The Death on the High Seas Act (DOHSA), 49 USC 40120, governs crashes occurring more than one marine league (approximately three miles) from land. The DOHSA limits recovery to pecuniary damages only.
- The Ford Federal Aviation Reauthorization Act of 2000, PL 106-181, which, among other things, amends provisions of the above DOHSA to clarify that crashes within 12 nautical miles ("territorial waters") from U.S. shores will be adjudicated by domestic state and federal laws and not DOHSA.
- The Foreign Sovereign Immunities Act, 28 USC 1330, governs the [WAIVER](#) of [SOVEREIGN IMMUNITY](#) for foreign governments whose airlines cause injuries in the United States.

Domestically, major issues of travel safety fall under the Department of Transportation (DOT) and the DOT's Federal Aviation Administration (FAA), and to a lesser degree, the National Transportation Safety Board (which is not affiliated with the DOT but is responsible for investigating air accidents), the Department of State, U.S. Customs, and the Department of Health's Center for Disease Control (CDC).

The Travel Industry

Congress has used the Commerce Clause as authority to enact other laws affecting travel safety. One such law is the Air Carrier Access Act of 1986 (49 CFR 382), which prohibits [DISCRIMINATION](#) and requires physical accommodation of passengers with disabilities. Airlines may not require advance notice that a person with a [DISABILITY](#) is traveling (with certain exceptions involving special equipment or hook-ups), and airlines are prohibited from restricting the number of [DISABLED PERSONS](#) on a flight.

As a general rule, "common carriers," such as airlines, cruise line, bus and rail operators, are held to a higher standard of care owed to passengers and travelers. Common carriers cannot require or request patrons to sign contracts that purport to disclaim liability caused by the [GROSS NEGLIGENCE](#) or intentional misconduct of the common carrier or its agents/employees. Nor may common carriers attempt to enforce such a disclaimer even if it appears on a passenger ticket.

Liability of Travel Agencies

Several state courts have ruled that travel agents are agents of the consumer and not the travel service providers. According to these states (including Arizona, California, Illinois, Louisiana, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, and the District of Columbia), travel agents are fiduciaries owing a high standard of care. This makes their obligations and duties to the consumer independent from their relationship with airlines, cruise lines, hotels or tour operators. In addition, it exposes them to potential liability for harm or injury to their customers caused by travel arrangements made by them.

Some of the legal theories under which travel agents or agencies have been sued (in addition to the travel supplier or tour operator actually providing the service or accommodation) include:

- **Failure to Disclose Identity of Supplier:** A travel agent must disclose the identity of a supplier or tour operator ultimately responsible for delivering the travel services. If the agent fails to make such a disclosure, the agent may be jointly liable for any harm or injury caused to the traveler by the supplier or tour operator.
- **Vouching for the Reliability of Suppliers or Tour Operators:** By doing so, the travel agent may be jointly responsible for harm or injury to the traveler under a variety of legal theories, including breach of [WARRANTY](#) and negligent or [FRAUDULENT](#) misrepresentation.
- **Failure to Disclose Health and Safety Hazard Information:** While the travel agent generally has no duty to investigate ultimate service providers for compliance with safety and health laws, the agent may be jointly liable in circumstances where the agent knew or should have reasonably known of specific risks and did not communicate them to the traveler. Some jurisdictions have found travel agents liable for failure to investigate crime levels in destination areas or advise of epidemics or needed shots/vaccines, or advise of need for travel insurance.

Airline Travel

Although air disasters are quite rare, they are of such magnitude and consequence that applicable laws and regulations should be addressed.

Encyclopedia of Everyday Law: Safety

Under its International Aviation Safety ASSESSMENT Program (IASA), the FAA, as part of its responsibility to inform the public about safety issues, assesses the civil aviation authority of each country with service to the United States. The assessments are to determine whether or not the civil aviation authority (CAA) overseeing airline operations to and from the United States meets the safety standards set by the United Nations body known as the International Civil Aviation Organization (ICAO). The FAA has established two ratings for the status of these civil aviation authorities at the time of the assessment: compliance with ICAO standards, noncompliance with ICAO standards. CAAs are the FAA's foreign counterparts. The IASCA assessment program began in 1992.

The FAA also conducts domestic Flight Operational Quality Assurance Programs (FOQA) through the use of in-flight recorders. The data logged by the recorders is used to evaluate in-flight operations, including standard operating procedures (SOPs), flight training, and cockpit workload. In the event of an accident, the FOQA program assists in interpreting the events leading up to the accident in order to determine causation.

In the unfortunate event of a domestic air accident, the NTSB is called in to investigate. Based upon its findings, injured persons or victims' survivors may have causes of action based on several legal theories including products liability against the aircraft manufacturers; negligent maintenance and repair; [NEGLIGENCE](#) of pilot and crew; negligence of ground support/air traffic control departments; negligent maintenance of airport runways or facilities, etc.

The Warsaw Convention applies to airlines passengers ticketed on an international itinerary, whether or not the accident occurs on the domestic part of a continuous international trip. In *El AL Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 97-475 (1999), the U.S. Supreme Court confirmed the Warsaw Convention's "exclusive" control over a passenger's right of recovery in U.S. courts for "physical injuries" sustained on international flights.

This created an inequity among passengers on the same flight, as those who were ticketed for a shorter (domestic) leg of the international trip (i.e., traveling between two U.S. cities on an international itinerary that continued beyond the second city) did not fall under the purvey of the Warsaw Convention. Until 1997, the maximum allowable recovery for damages against the airlines subject to the 70-year-old Warsaw Convention provisions was \$75,000 (excepting actions grounded in "willful misconduct"). Families of domestic passengers on the same flight, conversely, could recover millions of dollars.

In 1997, the International Air Transport Association (IATA) joined with the U.S. DOT to sponsor an international agreement which removes the \$75,000 limit of liability and permits passengers to recover full [COMPENSATORY DAMAGES](#) according to the laws of their place of permanent residence (domicile). More than 120 airlines have signed the agreement.

Cruise Line Travel

An area of more limited and restrictive legal rights is that of cruise line travel. In addition to accidents or injuries occurring on the vessels themselves, passengers may also be injured while being transported from ship to shore (embarking or disembarking), shopping in a port of call, on local excursion trips, or at a hotel owned by the cruise line. (The U.S. Supreme Court held, in *Kenward v. The Admiral Peoples*, 295 U.S. 649, 1935 that admiralty jurisdiction applied to an injury sustained on a gangplank leading to a ship.)

Admiralty (maritime) law (46 USC 183b) permits very short statutes of limitations for filing claims or lawsuits. For injuries occurring while on board cruise vessels that touch U.S. shores, passengers are generally required to file claims within six months and commence a lawsuit within one year, but [CASE LAW](#) suggests that the limitations must be "reasonably communicated" to passengers.

The passenger ticket is a very important document in the event of injury. It must disclose any limitations periods for filing suits or claims. Again, maritime law governs the rights and remedies of cruise passengers and preempts any state laws requiring "fine print" on consumer contracts to be printed in a certain print type or size.

The passenger ticket may also contain a "forum selection" clause. Such clauses generally provide that any disputes, claims, or lawsuits must be brought in the local court ("forum") in the country of the ship's registry or where the cruise line is headquartered. Again, these clauses are generally enforceable if notice to passengers is deemed adequate and fair. Forum selection clauses may be subject to [JUDICIAL REVIEW](#) for fundamental fairness or reasonableness.

Passenger tickets may also contain "choice of law" clauses, which are extremely important to a passenger's right to recover damages for injury or death. In such clauses, a statement of notice is made to the passenger that all disputes or claims will be resolved according to the laws of a certain country, state, or principality, etc. Choice of law clauses are generally enforceable but can be subjected to judicial review for [PATENT](#) unreasonableness or unjustness (such as fraudulent misrepresentation or overreaching). The application of foreign law may greatly impact the monetary damages or types of actions available to an injured traveler.

Waivers or limitations on liability may be contained in passenger tickets. Under maritime law (46 USC 183c), cruise vessels touching U.S. shores may not disclaim liability for physical injury or loss caused or contributed to by the vessel's negligence. However, in 1996, Congress enacted a provision (46 USC 183(b)(1)) permitting limitations on liability for infliction of emotional distress, mental suffering, or psychological injury.

Finally, if passengers are injured or need medical treatment while on board, cruise lines are generally not liable for [MEDICAL MALPRACTICE](#) of a ship's doctors or medical staff. Some courts have found liability when medical staff are touted or advertised by the cruise lines as an added benefit or advantage during the cruise.

Bus and Rail Tours and Packaged Tours

Generally speaking, the same rights and protections afforded passengers of other common carriers are extended to bus and rail travelers, as bus and rail systems are also considered "common carriers." Often, bus and rail tours are integral parts of total "package tours" arranged by a single tour operator or sponsor. U.S. based tour operators may not disclaim liability for injuries caused by their own negligence or the negligence of their agents or employees, but they may disclaim liability for injuries caused by a foreign supplier. Such disclaimers may be over-come by the application of certain theories of liability such as the following:

- Breach of warranty of safety: This may occur if the bus or rail tour operator promises that a particular travel service will be rendered in a safe manner, such as statements that recreational areas are "perfectly safe," or that buildings are "suitable for disabled persons."
- Negligent supervision: this theory applies for escorted tours handled by "qualified" or "trained" (etc.) tour directors or guides. When injuries occur as the result of the negligence of the guide, bus and rail tour companies may be held liable for negligent supervision, negligent hiring or selection, etc.
- Assumed ownership or control: this theory may apply in a minority of jurisdictions that hold tour operators liable for negligent travel services if they incorporate possessive language such as "our" or "we" when describing the availability or quality of travel services.
- Negligent or unreasonable exposure to risk: a minority of jurisdictions permit causes of action premised on a tour operator's failure to design or prepare an itinerary with safety risks considered, such as disease epidemics, political unrest, or inclement weather (for which the tour should be canceled or delayed).

- Motor vehicle accidents involving fault of a bus tour driver almost always results in liability on the part of the tour operators or providers.

Special Considerations for International Travel

- The FAA has limited air travelers to one carry-on bag and one personal item. All other luggage must be checked in.
- A government-issued photo identification (federal, state, or local) is generally required for passenger check-ins.
- Travelers should check their passenger tickets for such items as waivers of liability, time limits for filing claims, choice of law clauses, jurisdiction limits, etc., prior to implicitly accepting the terms by boarding the airplane, cruise ship, bus, or train.
- The State Department's Consular Information Sheets are available for every country in the world. They include information regarding unusual entry or currency regulations, drug penalties, unusual health conditions or high crime areas, political disturbances and areas of instability, etc. They are available at the 13 regional [PASSPORT](#) agencies, all U.S. embassies, and consulates abroad, and by electronic or first class mail (see below).
- Travelers are subject to the laws and customs of the countries they are in. Some of the offenses that U.S. travelers have been arrested abroad for include: drug violations; possession of firearms; photography of certain buildings, locations, or operations; and purchasing relics or antiques that were considered national treasures by host countries.
- Registration with the Consular Section of the nearest U.S. embassy or consulate makes things easier in the event of a natural disaster, civil unrest, or terrorist attack. At a minimum, travelers should locate and be aware of the location of these entities wherever they travel.

Select State Provisions for the Licensing and Regulation of Travel Agents or Sellers

Under the laws of those states with express laws, travel sellers generally include tour operators and consolidators, travel agents, pseudo travel agents, time share salespersons, telemarketing representatives, Internet web sites, and travel discount clubs.

CALIFORNIA: See California Business and Professional Code Section 17554.

FLORIDA: See Florida Statutes Annotated, Sections 559.927(10) and (11).

HAWAII: See Hawaii Revised Laws, Section 486L.

ILLINOIS: See Illinois Annotated Statutes, Chapter 121 1/2, Section 1857.

IOWA: See Iowa STATUTE 120.4.

MASSACHUSETTS: See Massachusetts General Laws, Chapter 93A.

NEW YORK CITY: See General Business Law Sections 157 and 158.

OHIO: See Ohio Revised Code Annotated, Section 1333.99.

OREGON: See Oregon Revised Statute Section 642.218.

RHODE ISLAND: See Rhode Island Revised Laws Annotated, Section 5-52-12.

VIRGINIA: See Virginia Statutes, Section 59.1-448 et seq.

WASHINGTON: See Washington Revised Code Sections 19.138 et seq.

Additional Resources

"The Cruise Passenger's Rights & Remedies" Dickerson, Thomas A., 2000. Available at <http://courts.state.ny.us/tandv/cruiserights.html>.

"Death on the High Seas Act" Available at <http://www.condonlaw.com/march2000.htm>.

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Law for Dummies. Ventura, John. IDG Books Worldwide, Inc. 1996.

"The Legal Status of Travel Agents" Dickerson, Thomas A., 2000. Available at <http://courts.state.ny.us/tandv/travelagent.html>.

"The Licensing and Regulation of Travel Sellers in the United States" Dickerson, Thomas A., 2000. Available at <http://courts.state.ny.us/tandv/Aqtaed1.htm>.

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Organizations

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