

A study of travel disputes from the legal viewpoint

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Abstract

Recently, due to economic growth, the people of Taiwan have become increasingly attentive to the quality of life. Engaging in leisure, as opposed to working, is one way of enjoying life and the first choice for many Taiwanese is to travel. Domestically and overseas, a dramatic rise in the number of tourists is evident during the holidays, and tourist businesses are flourishing. Even so, travel disputes are common, largely because of misunderstandings between travel agents and consumers. The consumer, however, is the disadvantaged party, since, having paid for the trip, or having paid a deposit, he or she is subject to the agency fulfilling its part of the agreement. When a consumer complains, the complaint may go unanswered, and it is difficult for the consumer to know what is available by way of legal redress. This study aims to provide consumers with ways of dealing with travel disputes, using real examples and legal explanations. Its purpose is to help consumers navigate the difficult waters of travel complaints, so that they can enjoy their trip knowing that they will receive the service they paid for.

Key words: leisure activity, travel dispute, tourism and recreation

1. Introduction

In recent years, due to rising living standards, people have started to pay more attention to the quality of their lives. As a result, sightseeing has become a popular leisure activity. According to a recent study, in 2006, 3.5 million Taiwanese travelled abroad. A decade later, in 2015, the number passed 10 million, indicating that the people of Taiwan love to travel.

There are two types of travel: one organized by a tour group and the other by the tourist himself. Unfortunately, the increase in the number of tourists has led to an increase in travel disputes. According to statistics released by the Travel Quality Assurance Association, there were approximately 600 travel disputes in 2000 and over 1000 in 2011. Needless to say, many of these disputes involved travel agencies, and the probability of a dispute occurring increases with large groups. The most common dispute involves cancelling or trying to cancel the agreement before the trip occurs. Such disputes are considered as travel contract disputes. The reason they happen is that either one or both parties is unaware of the laws and regulations governing travel contracts, and, even though many such disputes can be avoided by being familiar with the contract's fine print, one or both parties is seldom pleased with the outcome.

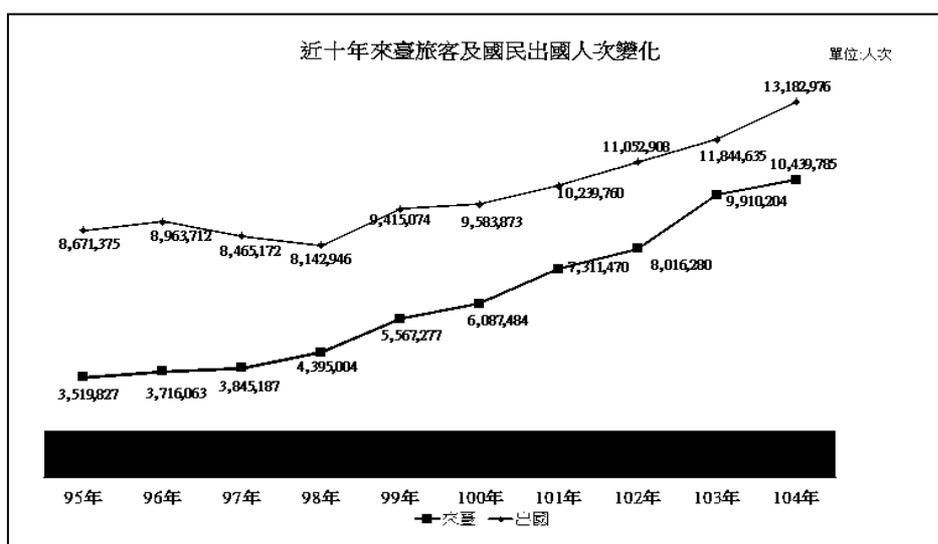


Figure 1: The number of departing and arriving passengers per year 2006-2016 (source: Taiwan Tourism Bureau, M.O.T.C., R.O.C.)

2. Research Method

This study adopted the observation research method, which is based on the set research goal, to systematically observe phenomena or behaviors according to a plan and objectively describe and explain the observed phenomena or behaviors.

3. Analyses and Discussions

Travel disputes may occur before, during, and even after travel. The best way to avoid any travel dispute is to know one's rights and read the agreement carefully before signing it. The cases described below are used to illustrate common travel contract disputes and the consumer's rights concerning complaints.

3.1 The purpose of paying a deposit to a travel agency

After a customer confirms his trip with his travel agency, the agency usually asks for a deposit. Occasionally, having paid a deposit, the customer may need to cancel the trip but he forfeits the deposit as a result. If, however, the agency is unable to organize the trip, the agency is required only to refund the deposit. This seems unfair to the customer, since the deposit acts as security only for the agency.

In Taiwan, there is no law related to deposits specified in travel contracts. Thus, whether or not to pay a deposit is entirely subject to the parties involved. According to Article 248 of the Civil Law, "when a party of a contract receives a deposit from the other party, the contract is considered as in effect." Thus, customers should read any contract before agreeing to pay the deposit, because paying a deposit means that both parties agree with the contract and the contract is in effect.

If a contract is not executed, the deposit shall be handled in accordance with Article 249 of the Civil Law, which says that "unless otherwise agreed in writing between the parties, the following regulations shall apply to the deposit:

1. When the contract is being executed, the deposit shall be returned or considered as a part of the payment.
2. If the contract cannot be executed due to a reason which can be imputed to the party which paid the deposit, the deposit shall not be returned.
3. If the contract cannot be executed due to a reason which can be imputed to the party which received the deposit, the party shall return double the amount of the deposit.
4. If the contract cannot be executed due to a reason which cannot be imputed to either of the parties, the deposit shall be returned." Thus, if a travel agency cancels a group tour due to a reason which can be imputed to the agency, then it shall return double the amount of the deposit to the consumer.

3.2 The free look period for a travel contract

These days, many travel contracts are standard form contracts. With such contracts, consumers are the disadvantaged party because many of the contract's stipulations are not neutral. Because of this imbalance, Item 1, Article 11-1 of the Consumer Protection Act provides, "Before a contract between a corporate operator and a consumer is made, there shall be a reasonable time period of 30 days for the consumer to review all the articles in the said contract." The specified free look period, then, is 30 days. Item 2, under the same article, provides that a standard form contract shall not contain a request giving up the right of the consumer's free look period, or the article with this request shall be considered invalid.

There have been many cases of consumers finding signed contracts flawed after paying the deposit, and then asking for the termination of the contract. In these cases, the other party, the travel agency, would refuse to return the deposit based on Article 248 of the Civil Law (the contract is in effect after the deposit is paid) or even ask the consumer to pay more. However, Article 11-1 of the Consumer Protection Act provides the 30-day free look period for consumers to review a standard form contract. Under this article, the contract can be terminated *unconditionally*. There is an important rule applicable to laws, which states that the priority of a special law is higher than that of a common law. The Consumer Protection Law is a special law and the Civil Law is a common law. Therefore, the Consumer Protection Law takes priority over that of the Civil Law. The travel agency's conduct of refusing the consumer's request to terminate the contract is an offense against the Consumer Protection Law.

Causes of travel disputes are not all related to travel agencies. It is possible that people who travel to another country may break local laws because they are unfamiliar with them, resulting in deportation or a

lawsuit. To ensure that tourists can enjoy themselves abroad, this study used real issues that people may encounter on their trips to foreign countries.

If, for example, a citizen of Taiwan owed a gambling debt in Macao, does he have to settle the debt when he is back to Taiwan?

In Taiwan, gambling is illegal. Article 266 of the Criminal Law concerns gambling in a public place: "A person who gambles in a public place or a place where the public can access shall be sentenced to a fine of not more than NT\$1,000, except for the case of gambling for the purpose of temporary entertainment. Gambling equipment and implements found on site and assets found on the gambling table or in the chip exchange, whether belonging to the person concerned or not, shall be confiscated." In cases where gambling takes place in a non-public place, Article 84 of the Law for Maintaining Social Order shall apply: "A person who gambles in a non-public place or a private professional gambling place where the public cannot access shall be sentenced to a fine of not more than NT\$9,000."

In Taiwan, gambling debts are not considered debts. Because it is impossible to clearly identify the money circulation involved in a gambling debt, in Taiwan there is no possibility of demanding repayment of a gambling debt through a lawsuit – although the issue is problematic when the debt occurs overseas.

In recent years, people who want to gamble went abroad. Gambling is legal in Macao, and nobody has to worry about penalties for gambling (other than monetary losses) if he or she gambles there. However, Mr. Wang's case is different. He went to Macao to gamble and owed a debt of 30 million dollars. Then he returned to Taiwan immediately. When the casino in Macao asked him to pay his debt, he claimed that gambling was illegal in Taiwan and the debt did not exist in his home country. The casino sued him in a court in Taiwan.

If Mr. Wang's gambling behavior had been in Taiwan, he would probably get away with not repaying the debt. However, he gambled in Macao, a foreign country. Therefore, Article 30 of the Civil Law, which provides that "for a debt incurred due to a legal fact not specified in Article 20 to the previous article, laws of the place where the debt incurred shall apply", is relevant to this case. The fact was that Mr. Wang gambled in Macao, where his gambling debt was admitted. For this reason, he could not refuse to repay his debt based on the argument that gambling debts were not admitted in Taiwan.

When in a foreign country, it is important to be careful not to break local laws. Similarly, do not assume that the consequence of a behavior prohibited in Taiwan but allowed elsewhere will not be looked into after your return to Taiwan, as laws of that country may still apply.

What will happen when a Taiwanese citizen breaks the law in a foreign country?

Sometimes we hear stories of a Taiwanese citizen breaking the law in another country. Most countries adopt the system of territorial law for their criminal law, which means that the country where a criminal offense occurs has the judicial right to enforce court decisions and execute penalties in relation to the concerned offender. In other words, the laws of other countries apply to tourists, so be careful what you say and do.

Mr. Chen killed a person in the US and was sentenced to 15 years in prison. After serving his sentence, he returned to Taiwan, where, as he left the plane, he was arrested by the Taiwanese police and charged.

Since Mr. Chen had already served his time, why was he arrested in Taiwan? The criminal law in Taiwan is territorial. Yet, according to the exceptional item in Article 7 of the Criminal Law, "this law applies to any citizen of the R.O.C. who committed a crime specified in any of the previous two articles in a place outside the R.O.C. and was sentenced to three or more years in prison. However, those not punished according to the applicable law of the place where the criminal offence took place are not subject to this article." In other words, if a criminal is a citizen of the R.O.C. and was sentenced to three or more years in prison in a place outside the R.O.C., he can be tried and sentenced again in Taiwan. In this case, Mr. Chen committed an offense of homicide. Article 271 of the Criminal Law provides that "a murderer shall be sentenced to death, life imprisonment, or 10 or more years in prison." The sentence for the offense Mr. Chen committed was at least 10 years in prison. Therefore, the exceptional item in Article 7 of the Criminal Law did apply, and thus the prosecution in Taiwan applied a homicide charge against Mr. Chen.

If someone smokes marijuana in a country where it is legal, will he be punished when he returns to Taiwan?

Smoking marijuana is illegal in Taiwan. Thus, some Taiwanese may want to experiment when they visit a country where it is legal. Understandably, they might worry about facing penalties on their return to Taiwan.

The Criminal Law is territorial. Thus, most offenders are sentenced in accordance to the law where the offense took place. However, in Article 5 to Article 7 of the Criminal Law, there are exceptional items which are personal. Item 8, Article 5 of the Criminal Law provides that "this law applies to anyone who committed any of the following crimes in a place outside the R.O.C.: (8) Drug offense. However, those who committed an offense of drug use and possession of drugs, seeds, or paraphernalia are not subject to this article." According to this

article, a Taiwanese citizen can use drugs in another country and will not be charged for drug use on his return to Taiwan as the Taiwanese Criminal Law is not applicable. It should be noted, however, that if he continues to use drugs after returning to Taiwan, the article of the Criminal Law would apply.

4. Conclusions and suggestions

Many travel problems occur because one or both parties misunderstand the other, which leads to the parties talking passed each another. Although Taiwan's regulations concerning travel contracts are sometimes unclear, there are applicable regulations at hand for most travel disputes. There is, though, a fly in the ointment. If consumers do not know about the existence of those regulations, they will be unable to protect their rights by using them. Indeed, it is likely that, with respect to any given regulation, buyers and sellers may be confused about its applicability. Thus, it is imperative that the government and related agencies educate Taiwanese citizens about their online consumer rights, so that consumers are well-informed about contractual safeguards and obligations.

In general, people are likely to ignore differences between domestic laws and those of other countries if they fail to research those differences thoroughly. Some behaviors abroad are legal – for example, marijuana-use in the Netherlands and gambling in Macao – but prohibited in Taiwan, and it is not uncommon for tourists to unintentionally break laws to which they are not accustomed. Therefore, before going abroad, tourists should pay attention to the specific laws of the country they visit. This is not only sound legal advice; it is also common courtesy.

Travel is an excellent choice for a leisure activity: it relaxes and broadens the mind. For employees today, who are often under pressure at work, travel embodies the wisdom in the saying, “A change is as good as a rest.” However, some travel plans turn out badly even before they begin. Therefore, before signing up to a travel agreement it is wise to “stop, look, and listen.” First, stop: consumers should be calm and not sign a contract impulsively. Second, look: the consumer should read the contract carefully, paying close attention to the fine print. And, third, listen: all complaints and queries should be expressed clearly and politely to the agency, which might then offer a solution or an explanation. It is important to ask the agency to explain every contractual detail that is not clear. If the response is not consistent with the contract, consumers can ask the agency to add a note or to delete a part of the contract, indicating they have done so with an authorized stamp or signature. If the above steps are followed, there should be no insurmountable problems with the agreement, and the consumer can look forward to an enjoyable trip. Bon voyage!

References

- Lin, S.T. (2008), *General Criminal Law*, enlarged 10th edition.
- Ma, H.B. (2014), *Private International Law*, detailed discussions, 3rd edition.
- Lin, S.T. (2006), *a Discussion of Offenses in the Criminal Law*, enlarged 6th edition.
- Wang, T.C. (2014), *General Principles of the Civil Law*.