I. Duty to Warn or Investigate
    a. Duties Owed
        i. Travel companies must warn travelers of known, specific dangers if those dangers are not open and obvious.[1]
            1. Ex: If a travel agent books a traveler's reservation at a hotel that it knows is located in a high crime area, then the agent must warn the traveler of that danger.[2]
        ii. Travel agents have a duty to warn customers about dangers that it should be aware of in the exercise of due care.[3] Foreseeability of the specific harm that occurred determines where the court will draw the line on what should or should not have been warned of.[4]
            1. Ex: A court held that a travel agent could not have been aware of the lack of medical training amongst the staff of a hotel. The agent booked a reservation for a traveler at the hotel, who suffered a heart attack during his vacation.[5]
            2. Ex: A slip-and-fall accident in a hotel shower was held not be a foreseeable harm, therefore the court did not impose a duty on the travel agent to warn customers before sending them to that hotel.[6]
        iii. A travel agent must disclose to the traveler material information that is reasonably obtainable, unless that information is obvious and apparent to that traveler.[7] The scope of this duty is limited to whatever is reasonable in a given instance.[8]
            1. Examples where a duty was found:
                a. Dicta – A travel agent books a customer at a hotel. The customer asks the agent if he can go water skiing at the hotel and the agent informs him that he can. At that point, if the agent had received complaints from previous customers staying at that particular hotel that the water skiing equipment was unsafe, the agent would have to disclose that information to the customer. Failure to do so would be a breach of duty. The customer's inquiry into water skiing makes the condition of the equipment material, and the previous complaints make

[1] Davies v. General Tours, Inc., 774 A.2d 1063 (Conn. App., 2001); Wilson v. American Trans Air, Inc., 874 F.2d 386 (7th Cir. 1989); Abramson v. Ritz-Carlton Hotel, 2010 WL 3943666 (D.N.J., 2010)
[2] Id.
[3] Abramson v. Ritz-Carlton Hotel, 2010 WL 3943666 (D.N.J., 2010); Schwartz v. Hilton Hotels Corp., 639 F.Supp.2d 467 (D.N.J., 2009)
[4] Id.
[5] Abramson v. Ritz-Carlton Hotel, 2010 WL 3943666 (D.N.J., 2010)
[6] Schwartz v. Hilton Hotels Corp., 639 F.Supp.2d 467 (D.N.J., 2009)
[7] McCollum v. Friendly Hills Travel Center, 172 Cal.App.3d 83 (Cal.App. 2 Dist., 1985)
[8] McCollum v. Friendly Hills Travel Center, 172 Cal.App.3d 83 (Cal.App. 2 Dist., 1985); Rookard v. Mexicoach, 680 F.2d 1257 (9th Cir. 1982)

knowledge of the condition of the equipment reasonably obtainable.[9]

b. While booking hotel reservations, a traveler asked her travel agent whether or not she would be safe on her vacation. The travel agent assured her that she would be safe at the hotel. The court found that by specifically mentioning a safety concern to the agent, the safety of the hotel became material information. The travel agent did not check the hotel's safety records, information that the court deemed reasonably obtainable. Because the travel agent did not investigate the safety records and disclose its findings to the traveler, the court found that it had breached its duty.[10]

2. Examples where no duty was found:

a. A travel agent had no duty to warn a traveler that the water ski equipment at the hotel he was staying at may be dangerous to use when that traveler asked if he could go water skiing at that hotel. With no reports of unsafe conditions from previous travelers, the agent had no material information to disclose. Additionally, information about the unsafe conditions were not reasonably attainable, because the traveler, an experienced water skier, used the equipment despite their condition. The court reasoned that if a veteran water skier could not determine if the equipment was too dangerous to use, then a travel agent certainly couldn't make that determination.[11]

b. A traveler booked a skiing vacation with a travel agent. Bad weather conditions initially prevented the traveler from skiing, but it was unclear whether or not the conditions would clear in time to allow her to go skiing at all. Because being completely unable to ski was only a possibility, and not a certainty, the travel agent had no duty to warn the traveler that she would be unable to ski.[12]

iv. A travel agent must exercise reasonable care in securing passage on an appropriate carrier and lodging with an innkeeper.[13]

1. Ex: A traveler booked reservations at a hotel through a travel agent. The travel agent did not confirm those

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[9] Id.
[10] Loretti v. Holiday Inns, Inc., 1986 WL 5339 (E.D.Pa., 1986)
[11] McCollum, 172 Cal.App.3d 83
[12] United Airlines, Inc. v. Lerner, 87 Ill.App.3d 801 (Ill.App. 1 Dist., 1980)
[13] Bucholtz v. Sirotkin Travel Ltd., 74 Misc.2d 180 (N.Y.Dist.Ct., 1973)

reservations and did not tell the traveler when the hotel plans changed. The court held that the travel agent breached its duty.[14]

2. Ex: A US traveler purchased plane tickets to France through a travel company. That company did not inform her that she would need a visa to get into the country and she was turned away. The court held that the travel company breached its duty by not disclosing the visa requirements.[15]

b. No Duty Is Owed
    i. Generally:
        1. Generally, if a travel agent or its employees are not negligent, courts refuse to impose liability for a tourist's injuries.[16]
        2. A travel agent is not an insurer, and is not required to warn of or protect against every potential incident that may occur on the trips it books.[17]
    ii. Specifically:
        1. Travel agents have no duty to warn of dangers that are "open and obvious", that is, equally observable to both the travel agent and the customer.[18]
        2. Travel companies have no duty to actually inspect or investigate the instrumentalities of a third party to ensure travelers will be safe.[19]
            a. Ex: A tour arranger using a third-party car rental service to rent cars to its customers has no obligation to inspect those cars and ensure that they are fit to be rented.[20]
        3. Travel companies have no duty to investigate the safety of the destinations that they send travelers to[21], unless the traveler specifically requests it.[22]
        4. Travel companies have no duty to give travelers general safety precautions.[23]
        5. Puffing in advertisements does not create contractual warranties.[24]

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[14] Id.
[15] Levin v. Kasmir World Travel, Inc., 143 Misc.2d 245 (N.Y.City Civ.Ct., 1989)
[16] Connolly v. Samuelson, 671 F.Supp. 1312 (D. Kan. 1987)
[17] Abramson v. Ritz-Carlton Hotel, 2010 WL 3943666 (D.N.J., 2010)
[18] Davies v. General Tours, Inc., 774 A.2d 1063 (Conn. App., 2001)
[19] Bryant v Cruises, Inc., 6 F.Supp.2d 1314 (N.D. Ala., 1998); Lavine v. General Mills, Inc., 519 F.Supp. 332 (D.C. Ga., 1981); McAleer v. Smith, 860 F.Supp. 924 (D.R.I., 1994)
[20] Weiner v. British Overseas Airways Corp., 60 A.D.2d 427 (N.Y.A.D. 1978)
[21] Fling, 765 F.Supp. 1302
[22] Creteau v. Liberty Travel, Inc., 195 A.D.2d 1012 (N.Y.A.D. 4 Dept., 1993)
[23] Sova v. Apple Vacations, 984 F.Supp. 1136 (S.D. Ohio 1997)
[24] Weiner, 60 A.D.2d 427; Lavine, 519 F.Supp. 332; Raskin v. Ulyses Lines, Ltd., No. 79 Civ. 4275 (HFW) (S.D.N.Y., 1980)

        a. Ex: A travel agency distributed its brochures to tourists. The brochures informed tourists where they could go to rent cars. The court held that the mere fact that the brochure stated that a rental company had "fine cars" did not mean that the travel agency had guaranteed that those cars would be free of defects. [25]
        b. Ex: A travel agent who says a trip will be "safe and reliable" is not offering a warranty that no harm will come to the traveler.[26]
    6. Travel companies are not assumed to insure customers' safety from their own negligence or the negligence of others.[27]
    7. Travel companies with no particular connection to a location have no duty to warn their customers of any dangers posed by third parties nearby that location.[28]
        a. Ex: An auto club that endorses a hotel (that it does not own) in its tour book does not have a duty to warn its customers that people have been assaulted nearby.[29]
    8. Travel agents are not liable for losses resulting from the unforeseeable criminal acts of third parties.[30]
        a. Ex: A travel company books a Roman vacation for a traveler, during which that traveler leaves the hotel grounds and gets her purse stolen. The travel company is not responsible for that theft.[31]

II. Standard of Care
    a. Travel agents do not have to meet the heightened standard of care that common carriers are held to in their duties.[32]
        i. Ex: When a travel agent books a safari tour for a traveler, it is not required to use "the highest degree of skill, care and foresight in protecting [its customers] from injuries"[33] while that customer is taking the tour.[34]
    b. Travel agents must exercise good faith and reasonable skill in executing their agreements with customers.[35]

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[25] Weiner, 60 A.D.2d 427
[26] Lavine, 519 F.Supp. 332
[27] Id.
[28] Yanase v. Automobile Club of So. Cal., 212 Cal. App.3d 468 (Cal.App. 4 Dist., 1989)
[29] Id.
[30] Taylor v. Trans World Airlines, Inc., 56 Ohio App.2d 117 (Ohio App., 1977)
[31] Id.
[32] Connolly, 671 F.Supp. 1312
[33] King v. Vets Cab, Inc., 295 P.2d 605 (Kan. 1956)
[34] Connolly, 671 F.Supp. 1312
[35] Abramson v. Ritz-Carlton Hotel, 2010 WL 3943666 (D.N.J., 2010); Rodriguez v. Cardona Travel Bureau, 523 A.2d 281 (N.J.Super.L., 1986)

i. Ex: A travel agent booked a flight for its customer using a charter airline rather than a scheduled airline. As a travel agent that presumably regularly books flights, it should have known that using a charter airline increases the risk of trip cancellation. However, the agent did not advise its customer of this risk, nor did it inform them that trip cancellation insurance was available. When the flight was cancelled, the court held that the travel agent had not exercised reasonable skill when it failed to warn the customer of this risk. Therefore, it had breached its duty.[36]

III. Contractual Disclaimer
   a. Contractual limitations of liability are binding upon tour participants[37]
      i. Under agency law, liability disclaimers are binding even if the traveler was not the one who purchased the tickets and was therefore unaware that the disclaimer existed.[38]
      ii. Disclaimers are binding even if the traveler does not sign them.[39]
      iii. Mere possession of a ticket containing a liability disclaimer is enough to put a traveler on notice of its presence and thereby be bound by it.[40]
   b. If enforcing the disclaimer does not go against public policy, then travel agencies can disclaim the negligence of others.[41]
      i. Ex: A tourist received a travel agent's brochure stated that the agency "assume[d] no liability. . . for any reason whatsoever". The court held that this disclaimer relieved the agency of liability for the tourist's injuries.[42]
   c. A travel company can disclaim liability for its own negligence, so long as the disclaimer clearly and unequivocally states the intent of the company.[43]
      i. But those disclaimers do not apply to minor children of the injured parties.[44]
   d. An effective disclaimer precludes the enforcement of any warranties between a travel agent and its customer.[45]
   e. Travel companies can use disclaimers to waive their liability for negligent selection.[46]

IV. Third-Party Negligence

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[36] Id.
[37] Smith v. West Rochelle Travel Agency, Inc., 1997 WL 183275 (NY App. Div., 1997)
[38] Hofer v. Gap, Inc., 516 F.Supp.2d 161 (D.Mass., 2007)
[39] Sova, 984 F.Supp. 1136
[40] Feingold v. Cannard Lines, 767 F.Supp.84 (U.S. Dist. NJ 1991)
[41] Connolly, 671 F.Supp. 1312
[42] Id.
[43] In re Complaint of Royal Caribbean Ltd., 403 F.Supp.2d 1168 (S.D.Fla., 2005); Cutchin v. Habitat Curacao-Maduro Dive Fanta-Seas, Inc., 1999 WL 33232277 (S.D.Fla., 1999); Travent, Ltd. V. Schecter, 718 So.2d 939 (Fla.App. 4 Dist., 1998); In re Complaint of Royal Caribbean Cruises Ltd., 459 F.Supp.2d 1275 (S.D.Fla., 2006)
[44] Id.; Kirton v. Fields, 997 So.2d 349 (Fla., 2008)
[45] Id.; Ramage v. Forbes Intern. Inc., 987 F.Supp. 810 (C.D. Cal., 1997); Lavine, 519 F.Supp. 332
[46] Ramage v. Forbes Inter. Inc., 987 F.Supp. 810 (C.D. Cal., 1997)

a. Travel companies are not responsible for the negligence of third parties whose activities the company neither operates nor controls.[47]
    i. Even if the third party happens to follow a request made by the travel company, it is not considered to be under the company's control.[48]
b. Under Apparent Agency, a travel agent can be responsible for the negligence of a third party if it acts in a way that would lead travelers to believe that the party is an employee of the agent.[49]

V. Negligent Selection
a. Duties Owed:
    i. Travel agents will have breached their duty regarding negligent selection if it receives customer complaints specifically about the conditions of the accommodations arranged, fails to make specific inquiries into those complaints, and continues to arrange those accommodations for future customers, despite the complaints.[50]
        1. Ex: A travel agent booked a hotel stay for one of its customers, who was injured when she slipped and fell in that hotel's bathtub. The court held that the travel agent had not breached any duty because it had not received any complaints about the condition of that hotel from previous customers.[51]
        2. A travel company can rely on the general reputation of its independent service suppliers and on the lack of knowledge about past problems and still avoid liability.[52]
    ii. Because a travel company holds itself out as a travel expert, it has a duty to have some basic knowledge about the quality of the accommodations it books for its customers.[53]
        1. Ex: A travel agent promised a traveler that a hotel had quality accommodations and booked a reservation at that hotel without further investigation. The court found that the travel agent had breached its duty because it actually knew nothing about the hotel and its conditions turned out to be completely substandard.[54]

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[47] Wolf v. Tico Travel, 2011 WL 5920918 (D.N.J., 2011); Honeycutt v. Tour Carrieage, Inc., 997 F.Supp. 694 (W.D.N.C., 1996); Manahan v. Yact Haven Hotel, 821 F.Supp. 1110 (1992); Tillman v. Continental Plaza Hotels & Resorts, 2000 WL 33250072 (S.D. Tex., 2000); Dorkin v. American Exp. Co., 74 A.D.2d 877 (N.Y.A.D. 3 Dept., 1974); Cutchin v. Habitat Curacao-Maduro Dive Fanta-Seas, Inc., 1999 WL 33232277 (S.D.Fla., 1999)
[48] Lavine, 519 F.Supp. 332
[49] Vermeulen v. Worldwide Holidays, Inc., 922 So.2d 271 (Fla.App. 3 Dist., 2006)
[50] Plinio v. American Aruba Beach Resort & Casino, 1998 WL 1286233 (D.N.J., 1998)
[51] Id.
[52] Honeycutt, 997 F.Supp. 694
[53] Stevenson v. Four Winds Travel, Inc., 462 F.2d 899 (C.A.5 Fla., 1972); Fling v. Hollywood Travel and Tours, 765 F.Supp. 1302 (N.D. Ohio, 1990); Abramson v. Ritz-Carlton Hotel, 2010 WL 3943666 (D.N.J., 2010); Josephs v. Fuller, 186 N.J.Super. 47 (N.J.Dist.Ct., 1982)
[54] Josephs v. Fuller, 186 N.J.Super. 47 (N.J.Dist.Ct., 1982)

2. Ex: A travel agent booked a hotel for a customer after that customer requested accommodations with "state of the art medical services". While staying at the hotel, that customer experienced heart failure and ultimately died because the defibrillator at the hotel was in disrepair, and the hotel staff did not know how to use it. The court, held that while the request for "state of the art medical services" imposed a duty on the travel agent to investigate that hotel's medical services, that duty did not extend to making sure that the hotel staff was well-trained and that the equipment was properly maintained. Therefore, no duty was breached.[55]
3. A travel agent can rely on the general reputation of its independent service supplier[56] and on positive feedback from prior travelers without breaching this duty.[57]

b. No Duty is Owed
   i. When a travel agent has no knowledge of prior incidents, it has no duty to make specific inquiries about particular aspects of an independent contractor's business.[58]

VI. Forum Selection
   a. Clauses limiting where a traveler can bring suit are almost always enforced.[59]

VII. Products Liability
   a. Strict liability for a defective product does not extend to vacation packages and the like because planning a vacation is a service and not a product.[60]

VIII. Premises Liability
   a. If the travel company is not the owner or occupier of the location where the tourist's accident occurred, then the company does not have a duty to warn of hazards, to repair those hazards, or to maintain the premises, under premises liability.[61]
      i. Ex: A travel agency that books tours on an island does not have a duty to warn tourists of hazardous conditions on the island, nor does it have a duty to protect tourists once they are on the island.[62]
   b. Even if the travel company is the owner and/or occupier of the location, it only has a duty to warn if it has actual or constructive knowledge of a danger which is not readily discoverable to customers.[63]

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[55] Abramson v. Ritz-Carlton Hotel, 2010 WL 3943666 (D.N.J., 2010)
[56] Wilson, 874 F.2d 386
[57] Fling, 765 F.Supp. 1302
[58] DeMarco v. Apple Vacation, Civil No. 98-2012, trans. Oral op. (D.N.J., 1998); Wilson v. American Trans Air, 874 F.2d 386 (7th Cir., 1989); Sova v. Apple Vacations, 984 F.Supp. 1136 (S.D. Ohio 1997)
[59] Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991); Arguenta v. Banco Mexiano, S.A., 87 F.3d 320 (9th Cir. 1996); Montoya v. Financial Federal Credit, Inc., 2012 WL 1965751 (D.N.M., 2012)
[60] Pena v. Sita World Travel, Inc., 88 Cal App 3d 642 (2nd Dist., 1978)
[61] Yanase, 212 Cal. App.3d 468;Lavine, 519 F.Supp. 332; Stevenson v. Four Winds Travel, Inc., 462 F.2d 899 (C.A.5 Fla., 1972)
[62] Id.
[63] Plinio v. American Aruba Beach Resort & Casino, 1998 WL 1286233 (D.N.J., 1998); Schwartz v. Hilton Hotels Corp., 639 F.Supp.2d 467 (D.N.J., 2009)