CHAPTER 4

Question 1:
A booking is made for a tour to Italy and Sicily. Classify these terms of the tour contract as being fundamental terms, conditions, warranties or mere representations:

- Grand Tour of Italy and Sicily
- 15 days from $___ *(book early and save)
- Includes 3 nights in Rome, 2 nights in Venice
- Highlights include (10 places nominated)
- Includes full breakfast
- Only ___ gives you more exclusive features in our tours that others can’t simply match!

Where a term could cover more than one category, explain the circumstances in which it could do so.

Answer

1. Grand tour of Italy and Sicily: “a tour of Italy and Sicily” is a fundamental term, as the destinations are fundamental to the choice of the tour; while the adjective “Grand” is a representation (or warranty) as to the high standard of the tour.

2. 15 days from $___ *(book early and save): “15 days” is a fundamental term, if the term is greatly reduced. If is reduced by a night or two, then it is a condition.

3. Includes 3 nights in Rome, 2 nights in Venice: is both a fundamental term and a condition, depending upon whether these are the most important aspects of the tour and the extent of the breach (see below).

4. Highlights include (10 places nominated): is both a condition and a warranty, depending on the extent of the breach.

5. Includes full breakfast: is both a condition and a warranty, depending on whether or not any breakfast is provided (see below)

6. Only ___ gives your more exclusive features in our tours that others can’t simply match!: is either a warranty or a mere representation, depending on whether it is mere puff or more serious

Where a choice is available, the context of the statement and the nature of the breach will determine the classification. For example if there were 2 nights, rather than 3, it would be treated as a breach of a condition, whereas if there were no nights, it would be treated as a breach of a fundamental term.
Another example is that ‘full breakfast’ could be either a condition or a warranty. If the statement advertises that a ‘full breakfast’ is to be provided for each day of the tour, and no breakfasts were provided at all during the tour, then the statement could be classified as a condition. This is because the promise is an important term of the contract in which a breach would impose a considerable additional cost to the traveller if it were breached. However if breakfast was provided for each day of the tour, but was a continental breakfast, and therefore not a ‘full breakfast’, then the breach would be a breach of warranty as it relates to the standard of the breakfast promised.

Question 2:

Mr Baka, who lives in Auckland, telephones Faraway Travel in Cairns, to book airfares for himself and his family from Auckland to the Maldives. Because the travel is to be less than 3 weeks away, he offers to pay by credit card and to fax through the front and back of his card. Faraway Travel sends Mr Baka credit card debit forms, which he signs and faxes back. The credit card company authorises the payment and MCOs are issued for the tickets. One month later, Faraway Travel receives advice of a dispute from the credit card issuer, and requests a charge back of the fare. Advise Faraway Travel on its liability to give the charge back, and on what else it should do.

Answer:

It is assumed that the travel agent uses the credit card details to credit the account of the airline directly for the airfare, rather than using the credit card details to credit its own bank account, and then transferring the money to the airline.

Amongst the merchant rules, which credit card issuers require its merchants to sign in order to accept credit card payments, there is a rule that the merchant’s bank account can be charged back with the amount of the transaction, if the cardholder disputes the validity of a debit. This is called a merchant’s charge back. Credit card companies will carry out a merchant’s charge back if the customer complains that the debit was not authorised, and that the card or card details have been stolen. In the case of the purchase of an air travel arrangements, the fact that the ticket issues in the name of a person other than the cardholder, means that the complaint is readily accepted by the credit card issuer, because there is no obvious benefit in a cardholder asking for a ticket to be issued in another name, unless it is for a member of the family. Because the credit card holder might only become aware of the debit when they receive their monthly statement, it is often a month after the transaction that the complaint is made and the charge back takes place.

In this scenario, the charge back advice would be issued to the airline, which would then pass the charge back on to the travel agent by debiting the travel agent’s account. The question is, can the travel agent dispute the charge back?

Because the travel booked is an international air fare, then the IATA Travel Agents Rules apply. Specifically, IATA Resolution 890 for ‘Card Sales Rules’ must be followed.

In this scenario, Faraway Travel processed the credit card transaction without sighting the card and the card holder being present (face-to-face), as required by IATA Resolution 890. It relied upon faxed copies of the card and the signature.

Therefore, Faraway Travel will have no choice but to accept the charge back from the airline, because the credit card transaction has not been carried out as required under Resolution 890. It will bear the loss.

Faraway Travel should mitigate its loss by cancelling any unused sectors of the trip and where possible, to obtain refunds to try to recover what monetary funds it can.
Airlines will refund the air fares for the unused travel arrangements, less cancellation fees, if the travel arrangements are cancelled before use.

Generally, the air travel arrangements will be used before the fraud is discovered and the charge back is made because it is part of the fraud that the airfares are booked for flights which take place within a month. In our scenario, the travel was booked in three weeks time. Therefore in this scenario, the option of cancelling the travel arrangements and obtaining a refund will not be available because the travel has been used.

If Faraway Travel is not IATA accredited, and/or books the airfare through a wholesaler or a consolidator, it will be responsible to recompense the wholesaler or consolidator for the airfare because the airline will charge back the wholesaler or consolidator.
Australia travel restrictions. 15.10.2020. Open for citizens: yes Open for foreigners: partial Open for tourism: no Quarantine: yes. Airlines Updates. Published on 15.10.2020 Qantas cancels all flights to U.S. and Japan until 31 January. Passengers holding an exemption to the travel restrictions issued by the Australian government. Read more. Flight Restrictions. This is a compilation of the Tourism Australia Act 2004 that shows the text of the law as amended and in force on 5 March 2016 (the compilation date). The notes at the end of this compilation (the endnotes) include information about amending laws and the amendment history of provisions of the compiled law. Uncommenced amendments. The effect of uncommenced amendments is not shown in the text of the compiled law. (c) to influence Australians to travel throughout Australia, including for events; and. (d) to help foster a sustainable tourism industry in Australia; and. (e) to help increase the economic benefits to Australia from tourism. 7 Functions. (1) Tourism Australia’s functions are Tourism Research Australia (TRA) provides tourism statistics and data on domestic travel, international visitors, forecasts and region specific data. Tourism Australia has tourism statistics as well as information on market regions relevant to the tourism industry. Australian Bureau of Statistics (ABS) provides tourism information such as accommodation statistics, visitor arrivals and departures and gross value of spending in different industries. Further advice and assistance. Check our general business information for additional regulations and obligations relevant to your business.