

OPINION LEGAL BRIEFS

Is there a duty to warn about Israel travel?

By Mark Pestronk  | Oct 20, 2023



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Our agency has several groups of clients going to Israel in the next few months. The clients will be on tours operated by well-established tour operators with good reputations. As of today, the trips are still scheduled to go, but I have several questions about our agency's legal responsibilities and the operator's rights. Let me ask them one at a time:

Q: *Do we have a duty to warn the clients about the possibility of rocket attacks and other violence?*

A: Your legal duty is limited to disclosing reasonably obtainable, relevant risks about the destination that a reasonably informed consumer would not necessarily know. Here, the risk is something that every reasonably informed consumer already knows about, so you have no duty to warn in this situation.

Nevertheless, if a client is injured on a tour, he may sue you anyway because his attorney will probably sue every company in the chain of sale, even if the case against you has no merit. You are especially likely to be sued if your agency is the only domestic entity in that chain.

Therefore, if you don't do so already, I strongly recommend that you get all future clients to agree a disclaimer such as those at www.pestronk.com/resources. Using disclaimers will deter potential lawsuits and will help you win actual lawsuits in case a client sues you.

Q: *Do we have a duty to advise them to cancel or postpone their trips?*

A: No, you have no such legal duty. In fact, you should let the client decide whether to cancel. If you persuade him to cancel, and the tour operates without incident, he could blame you for his loss. The best you can do is to point him to the State Department's travel advisory for Israel at travel.state.gov.

Q: *If they want to cancel, are the rocket attacks a kind of force majeure that allows a tour participant to cancel without penalty?*

A: Contrary to popular belief, and the belief of many attorneys, force majeure does not mean that the consumer is entitled to cancel without penalty and receive a refund. The term means an act of God or some other event so major that it excuses a party from performing its duties. It does not require a refund unless a contract expressly states that it does.

Q: *Can the operator postpone the tour for a year and decline to provide refunds?*

A: It depends on the contract between the tour operator and the participant. By "contract," I mean the tour operator's terms and conditions, together with some evidence that the client agreed to them, or that your agency agreed to them on behalf of the client.

During Covid, many if not most tour operators changed their contracts to provide that they could postpone a tour in the event of a crisis that made operating the tour impossible or impractical. If that's what the contract provides in this case, and if the operator elects to postpone, then your clients have no right to a refund.

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