

论旅游者旅游合同的附随义务

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厦门大学

硕士学位论文

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Analysis of the Tourist Collateral Obligation in the Travel Contract

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专业名称: 法律硕士

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## 内 容 摘 要

随着旅游市场的急速发展，社会法制的日益完善，人们的法制观念也在逐步提高，旅游者和旅游经营者之间因履行各自义务产生的分歧所带来的合同纠纷、侵权纠纷诉诸法院之事已不再是新鲜事件，究其原因很多是由于旅游者违反旅游合同附随义务所导致的。本文主要针对旅游者旅游合同的附随义务进行探讨，以期平衡旅游者与旅行社之间的权利义务，实现旅游合同的公平正义。

本文共分为四章：

第一章对旅游者旅游合同附随义务进行概述，包括旅游合同、旅游者、附随义务的涵义，旅游者旅游合同附随义务的特殊性，以及旅游者旅游合同附随义务的功能。

第二章详细分析阐述了旅游者违反旅游合同附随义务所带来的民事责任，包括旅游者违反旅游合同附随义务的责任性质、归责原则、责任竞合及所导致的法律后果。

第三章是对旅游者旅游合同附随义务的进行具体的分析，包括现行相关法律规定及问题、旅游合同约定存在的问题及旅游者旅游合同附随义务的类型。

第四章在明确了旅游者旅游合同附随义务、违反旅游合同附随义务责任及所带来的后果的前提下，重点对旅游者旅游合同附随义务的立法建构进行分析研究，阐述了旅游者附随义务法定化的必要性和意义，并有针对性地提出了旅游合同中旅游者附随义务的立法建议。

**关键词：**旅游者；旅游合同；附随义务

## **Abstract**

With the rapid development of the tourism market, social and legal system has improved, people's concept on legal system is gradually improving, It is not a fresh event which launching tort litigations or contract litigation to the court between tourists and tourism operators because of divergences in the performance of obligation any longer. The reason is that many of them are caused by the breach of the accompanying obligations in the travel contract due to tourists. This article focuses on the accompanying obligations of tourist travel contract in order to balance rights and obligations between the tourists and travel agencies, including fairness and justice of the travel contract.

This thesis consists of four chapters:

The first chapter unfolds an overview of tourists travel contract accompanying obligations, including tourists, accompanying obligations of the travel contract, the meaning of the particularity of the accompanying obligations of tourists travel contract, as well as tourists travel contract accompanying obligations.

The second chapter elaborates tourists' civil liability for the violation of the travel contract accompanying obligations, including tourists' violation of the nature of the responsibility of the travel contract accompanying obligations, imputation principle concurrence of responsibility and the legal consequences.

The third chapter analyzes the tourist who violates the accompanying obligations of the travel contract ,including existing relevant laws and regulations ,issue ,travel contract promises and tourist travel contract accompanying obligations.

Chapter Four defines the tourists accompanying obligation of tour contract, along with the responsibilities and the consequences that violate the



accompanying obligation in travel contract. Meanwhile, this chapter focuses on legislation constructions on the violation of the accompanying obligation in travel contract,expounds the necessity and significance of the statutory accompanying obligation for tourists, as well as the targeted legislative suggestiones and schemes for tourist accompanying obligation in travel contract.

**Key words:**Tourist;Travel Contract;Collateral Obligation

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# 目 录

引 言.....	1
<b>第一章 旅游者旅游合同附随义务概述 .....</b>	<b>2</b>
<b>第一节 旅游合同、旅游者、附随义务的涵义 .....</b>	<b>2</b>
一、旅游合同涵义.....	2
二、旅游者的涵义.....	3
三、附随义务的涵义.....	4
<b>第二节 旅游者旅游合同附随义务的特殊性 .....</b>	<b>7</b>
<b>第三节 旅游者旅游合同附随义务的功能 .....</b>	<b>8</b>
一、辅助性功能.....	8
二、平衡性功能.....	8
<b>第二章 旅游者违反旅游合同附随义务的民事责任 .....</b>	<b>10</b>
<b>第一节 旅游者违反旅游合同附随义务的责任性质 .....</b>	<b>10</b>
<b>第二节 旅游者违反旅游合同附随义务归责原则 .....</b>	<b>11</b>
一、违约责任的归责原则.....	11
二、违反附随义务归责原则.....	12
三、旅游者违反旅游合同附随义务归责原则.....	12
<b>第三节 旅游者违反旅游合同附随义务责任竞合 .....</b>	<b>13</b>
一、责任竞合.....	13
二、违约之诉与侵权之诉的区别.....	14
<b>第四节 旅游者违反旅游合同附随义务的法律后果 .....</b>	<b>15</b>
一、旅游者违反附随义务应承担损害赔偿理由.....	15
二、违约损害赔偿.....	16

<b>第三章 旅游者旅游合同附随义务的具体分析</b> .....	<b>18</b>
<b>第一节 现行法律规定及问题</b> .....	<b>18</b>
一、法律法规关于旅游者附随义务的内容不明确.....	18
二、《旅游法（草案）》关于旅游者附随义务的规定.....	19
三、司法解释规定不详尽，法律位阶低，适用面窄.....	20
<b>第二节 旅游合同约定存在的问题</b> .....	<b>21</b>
<b>第三节 旅游者旅游合同附随义务的类型</b> .....	<b>22</b>
一、服从导游按照旅游合同所进行的安排.....	22
二、尊重旅游服务人员.....	24
三、告知的义务.....	25
四、协助义务.....	26
五、旅游者对自身人身安全负有必要的保护和照顾义务.....	27
六、照顾义务.....	28
七、旅游者守时义务.....	28
<b>第四章 旅游者违反旅游合同附随义务的立法建构</b> .....	<b>30</b>
<b>第一节 旅游者附随义务法定化的必要性和意义</b> .....	<b>30</b>
<b>第二节 旅游合同中旅游者附随义务立法建议</b> .....	<b>31</b>
一、旅游合同有名化.....	31
二、明确规定旅游者旅游合同附随义务的类型、归责原则、法律后果.....	32
三、明确旅游者旅游合同附随义务存在的必然性.....	34
<b>结 语</b> .....	<b>35</b>
<b>参考文献</b> .....	<b>36</b>
<b>致 谢</b> .....	<b>38</b>

# CONTENTS

<b>Preface.....</b>	<b>1</b>
<b>Chapter 1 Summary on Collateral Obligation of the Tourist Tour Contract .....</b>	<b>2</b>
<b>Subchapter 1 Meanings of Tour Contract/Tourists/ Collateral Obligation.....</b>	<b>2</b>
Section 1 the Concept of Tour Contract .....	2
Section 2 the Concept of Tourist .....	3
Section 3 the Concept of Collateral Obligation .....	4
<b>Subchapter 2 Particularity of Collateral Obligation for Tourist Tour Contract .....</b>	<b>7</b>
<b>Subchapter 3 Function of Collateral Obligation for Tourists' Tour Contract ..</b>	<b>8</b>
Section 1 Auxiliary Fuction .....	8
Section 2 Balance Fuction .....	8
<b>Chapter 2 The Civil liability on Tourist's Violation against Collateral Obligation in Tour Contract.....</b>	<b>10</b>
<b>Subchapter 1 The Nature of the Responsibility on Tourist's Violation against Collateral Obligation in Tour Contract.....</b>	<b>10</b>
<b>Section 2 The Doctrine of Liability Fixation on Violation against Collateral Obligation .....</b>	<b>11</b>
Section 1 The Doctrine of Liability Fixation on Liability for Breach of Contract .....	11
Section 1 The Doctrine of Liability Fixation on Liability for Breach of Contract .....	12
Section 3 The Doctrine of Liability Fixation on Tourist's Violation against Collateral Obligation in Tour Contract.....	12

<b>Section 3 The Doctrine of Liability Fixation on Tourist's Violation against Collateral Obligation in Tour Contract.....</b>	<b>13</b>
Section 1 The Concurrent Liability in Liability for Breach of Contract and Liability for Tort .....	13
Section 2 Foremost Differences between Tort Action and Contract Action for the Tourist.....	14
<b>Subchapter 4 The Legal Consequence on Violation against Collateral Obligation in Tour Contract .....</b>	<b>15</b>
Section 1 Responsibility Grounds for Damages on Tourist's Violation against Collateral Obligation in Tour Contract.....	15
Section 2 Damages for Breach of Contract.....	16
<b>Chapter 3 Concrete Analysis of Collateral Obligation for Tourist Tour Contract.....</b>	<b>18</b>
<b>Subchapter 1 Existing Legal Provisions and Problems.....</b>	<b>18</b>
Section 1 Undefined Laws and Regulations on Tourist Collateral Obligation....	18
Section 2 Laws and Regulations on Tourists' Collateral Obligation in <Tourism Law (Draft)> .....	19
Section 3 Inexhaustive Jjudicial Interpretation/Low Rates of Law/Narrow Range of Application .....	20
<b>Subchapter 2 Existing Problems in Tourist Contract Promise .....</b>	<b>21</b>
<b>Subchapter 3 Types of Collateral Obligation for Tourists' Tour Contract .....</b>	<b>22</b>
Section 1 Arrangment Obedience According to The Tour Contract .....	22
Section 2 Respecting the Tour Service Staff .....	24
Section 3 The Obligation of Informing.....	25
Section 4 The Obligation of Assistance.....	26
Section 5 The Necessary Obligation of Self-protection and Self-consideration for Tourists .....	27
Section 6 The Obligation of Tending.....	28

Section 7 The Obligation of Time Keeping for Tourists .....	28
<b>Chaper 4 Legislation Construction on the Tourist's Violation of Tour Contract Collateral Obligation .....</b>	<b>30</b>
<b>Subchapter1 The Necessity and Significance on the Legalization of Tourist     Collateral Obligation .....</b>	<b>30</b>
<b>Subchapter 2 Legislative Suggestiones on Tourist Collateral Obligation in     Tour Contract.....</b>	<b>31</b>
Section 1 Codification for Tour Contract .....	31
Section 2 Specific Type/ Imputation Principle/ Legal Consequence.....	32
Section 3 Specific Necessity on Tourist Collateral Obligation in Tour Contract .....	34
<b>Conclusion .....</b>	<b>35</b>
<b>References .....</b>	<b>36</b>
<b>Acknowledgements .....</b>	<b>38</b>

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## 引 言

旅游业作为 21 世纪的朝阳产业，发展势头强劲，已经成为全球经济发展中最具潜力和规模最大的产业之一。在世界旅游业蓬勃发展的同时，我国旅游业也得到了迅猛发展。旅游规模无论从人数上还是产值上都不断扩大，但是我国旅游市场在急速发展的同时，仍然存在着许多行业痼疾和法律问题。在此，本文仅针对旅游者旅游合同的附随义务进行探讨。旅游者的附随义务，既具有其特殊性，也具有附随义务的一般特性。附随义务是基于民法中的“帝王条约”诚实信用原则产生的，是合同法义务群之一。虽然旅游的顺利开展在旅游者履行主要的缴费义务以后，主要有赖于旅行社的规范操作。旅游行政部门颁发的行政法规和规章也主要是规范旅行社的，包括即将正式出台的《旅游法》也主要是规范旅游服务企业的旅游服务工作，以期保护旅游者的合法权益。笔者认为这是符合实际和有必要的，但是不可否认，旅游的顺利开展离不开旅游者的积极配合，这就有必要对基于诚实信用原则而产生的旅游者的附随义务进行规制。

本文主要是针对旅游者旅游合同的附随义务进行探讨，包括旅游者旅游合同附随义务的特殊性、功能，旅游者附随义务的具体类型，旅游者违反旅游合同附随义务的责任性质、归责原则、法律后果以及现在有关旅游者旅游合同附随义务存在的问题等进行研究，以期平衡旅游者与旅行社之间的权利义务，实现旅游合同的公平正义。



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