HOLIDAY VIOLENCE: THE LIMITS OF TOUR OPERATOR LIABILITY

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Mercifully, offences against the person are committed rarely. Such incidents of violence are at least as rare in the context of a foreign holiday as they are in a domestic setting. However, such incidents do happen. For obvious reasons, the assailant is not usually a suitable target for the injured party; he (and it usually is a he) will either be domiciled outside the jurisdiction and/or will lack assets or insurance. Instead, the injured party may look to his or her holiday tour operator for satisfaction (whether or not the holiday was a regulated package).
Few claims of this kind have reached a courtroom (in this jurisdiction at least). They clearly represent an attempt to extend the present boundaries of tour operator liability.
Such claims also give rise to complex issues surrounding the nature of the contractual and tortious duties of care owed by the tour operator and to (perhaps obvious) questions of foreseeability. It is necessary, among other things, to consider both the primary and vicarious liability of the tour operator. In this sense this dynamic area of travel law serves as a useful illustration of a number of broader themes in the modern law of civil obligations.
This article considers some of the issues to which these claims give rise.

Introduction

Let us assume that I have booked a conventional package holiday with a mainstream UK tour operator. The holiday accommodation provided to me is a hotel in Turkey (a random example). During the course of the holiday I am assaulted by another person (Assailant A) at a time when I am blamelessly enjoying the sun on the hotel swimming pool terrace. The following factual questions may be relevant to the consideration of whether liability can be established against the UK tour operator (in addition to the obvious factual question as to why the incident occurred):

During the course of the holiday I am assaulted by another person

1. Was the holiday a regulated package?
2. How did the defendant describe or delimit its contractual obligations (in its brochure)?
3. What was the status of the assailant – was he an employee of the hotel or a private individual?
4. If an employee, was there any factual connection or other nexus between the violence and the employment duties of the assailant and, if so, what was the connection?
5. What was the security provision at the hotel?
6. Had there been any other incidents of this kind and, if so, when and what did they involve?
7. How was the incident dealt with by the hotelier after the incident?
8. Were the police called and is a report available?
9. Was there a local prosecution and, if so, what was its outcome and what is its evidential value in the English proceedings?

Some of these questions will, of course, be common to all tour operator claims. However, some are specific to incidents of violence. It is not possible to provide a generic approach to potential claims or defences in this context; this

is an area where the cliché that the facts will determine the outcome has, perhaps, more truth than in other areas of the law. However, there are some commonalities of approach and there is (now) some fairly recent case law which, at least, provides an indication of present judicial thinking in this area. This article aims to consider these and other questions. Before dealing with the detail, however, let us add another element to the factual example provided above: suppose that the injured British holidaymaker is not reclining by the hotel swimming pool, but is, instead, assaulted while on the public beach in front of the hotel and let us also suppose that his assailant (Assailant B) is not an hotel employee, but is another visitor to the beach.

The Package Travel Regulations 1992: Primary and Secondary Liability

Any claim against the tour operator of the kind contemplated by the example given above is most likely to be met by an obvious objection: it will almost certainly be denied that the scope of any duty – whether contractual or otherwise – extended to the protection of a claimant from the unforeseeable and violent criminal acts of a third party.

However, the specifics are, as I have indicated, important. In the context of a claim that is brought against the tour operator by reference to the Package Travel etc. Regulations 1992, a number of connected issues can be identified:

1. Did the package include the accommodation where the assault took place and/or the services in the course of which the assault occurred;
2. As a matter of first principles, is Regulation 15 engaged in the context of a violent assault;
3. Can the defendant tour operator rely on regulation 15(2)(b) or (c) of the Regulations

The discussion that follows is specific to contractual claims that are pursued by reference to regulation 15 of the Package Travel Regulations 1992. However, it should also be borne in mind that most tour operators' standard (contractual) booking conditions will contain clauses that echo the content of regulation 15 and so this discussion can largely be transposed to contractual claims under the booking conditions.

In my assailant A example above, the use of the swimming pool terrace and the services of hotel employees clearly fall within the scope of what is provided as part of the regulated package holiday. The position may well be different in respect of Assailant B. One might think that a claim against the tour operator for an assault committed by a member of the public on a public beach would be doomed to fail. First, the beach, while immediately adjacent to the hotel, is a public access facility, is neither owned nor operated by the hotel and is not provided by the tour operator for use as part of the regulated package.

Most tour operators' standard booking conditions will contain clauses that echo the content of regulation 15

Second, assailant B is not in any way connected with the provision of services to hotel guests and there is clearly and obviously no vicarious liability for his criminal wrongdoing. However, some slight tweaks to these facts may prompt different conclusions. The tour operator is not going to face any form of secondary liability for the actions of assailant B, but this may not necessarily mean that it is invulnerable to the contention that it has failed in its primary duty to the injured consumer. Let us suppose, for example, that the beach, while publicly owned and operated, is habitually used by the hotel for the purposes of events, entertainments and activities (water sports) in which its guests exclusively participate. If we also imagine that the hotel's location is so closely

proximate to the beach that no very clear dividing line exists between the beach front hotel grounds and the beach itself (and no one locally seems very clear where the boundary lies) then, perhaps, a duty of care which extends to the beach is not so unlikely. Indeed, case law like *Djengiz v Thomson Holidays Limited* [2000] CLY 4038 (where the tour operator was held liable under the Regulations for the failure of a hotel to ensure that a beach volleyball court, used by hotel guests, on a public beach was safe) and *Jones v Sunworld Limited* [2003] EWHC 591 (QB) (fatal accident where the deceased drowned in a shallow lagoon in the Maldives which did not form part of the hotel grounds) reminds us that a tour operator's contractual duties (and potential liability under regulation 15) do not always end at the hotel gates.

As the *Jones v Sunworld Limited* decision makes clear, a tour operator and hotelier supplier's duty in respect of hazards that lie outside the hotel boundary will be different in quality and degree from their duties in respect of hazards inside the hotel (it should be remembered that the claim against the tour operator failed in the *Jones* case): the tour operator/hotelier will not be expected to exercise the same care with respect to danger which is off the premises, but this does not necessarily mean that no duty is owed at all. The extent of the care that will be required will likely (and inevitably) be a question of fact in each case and is equally likely to depend in large part on the question whether the tour operator/hotelier knew or ought reasonably to have known of the relevant hazard. In the context of an assault on a public beach by assailant B, it will obviously be relevant whether there have been previous attacks on hotel guests on the public beach and whether the hotel is located in an area where violent incidents involving tourists are common. At the very least, a Court may be prepared to acknowledge a duty to warn on the part of the tour operator and its hotelier supplier with a view to mitigating the risk of assault ("We want to help you to be safe so that you can enjoy your holiday. The vast majority of local people are friendly and welcoming, but you should be aware that there have, albeit rarely, been violent incidents on the public beaches close to this hotel. It would be sensible to choose a sunbathing spot that is within sight of the hotel and other families and we would suggest that you keep valuables and money out of sight at all times.") More ambitiously, perhaps, the facts (regular past incidents of assault) may require appropriate security devices (fences, alarms, guards, patrols and the like) with a view to the elimination (so far as practicable) of the risk.

The vast majority of local people are friendly and welcoming

Questions concerning primary and secondary liability will likely arise in the context of my assailant A example (where we shall assume that assailant A is an hotel employee). As to primary duty, one may – for example – expect the tour operator/hotelier to have carried out some form of sensible recruitment process that will have weeded out those who have extensive criminal records for offences of violence.

Equally, a form of staff monitoring which ensures that complaints by guests and other staff members (particularly for violence and aggression by an employee) are logged and acted upon (perhaps by invocation of a disciplinary procedure) may be regarded as basic expectations. Clearly, if assailant A is found to have 'form' for violence towards hotel guests (and this has not been dealt with by his employer, the hotelier, in a sensible manner) then the tour operator will be vulnerable to a charge that its supplier has failed in its duty to exercise reasonable care and skill. Dealing with an employee with a record of violence or aggression in a manner that is sensible may, of course, need to be considered with local employment standards and practices in

mind (although in this context there may be extreme cases where the assailant's past record is such that the consumer can take advantage of the additional limb to Phillips J's oft-cited dictum in *Wilson v Best Travel Limited* [1993] 1 All ER 353 (QB) and can, therefore, argue that the hotel employee assailant's record is such that a reasonable holidaymaker informed of it in advance would have declined to stay at the hotel).

More interesting questions arise in the context of a tour operator's potential vicarious liability for assailant A's violent conduct. Regulation 15 of the 1992 Regulations has two central components: a requirement that there be a breach of contract ("a failure to perform ... or improper performance of the contract") and, where there is such breach of contract, an imposition on the tour operator of an extended liability (what has sometimes been referred to as the 'extended vicarious liability' of the tour operator) for the acts/omissions of its suppliers. One may regard assailant A's conduct as the most obvious example of a failure to perform the contract in a manner consistent with the contractual expectation of reasonable care and skill. Alternatively, it may be said that the conduct of the assailant is so far beyond the scope of his duty (was so different in nature and quality from the job that he was employed to perform) that no liability could conceivably arise whether in contract or under regulation 15. There is very little in the way of any definitive guidance on these issues from the courts in a package travel or other holiday context. It is tempting to consider the tour operator's regulation 15 liability for A's conduct by reference to common law authority on vicarious liability. However, regulation 15 of the 1992 Regulations, contains a statutory/contractual, rather than common law, framework for determining liability. As I have indicated, a violent assault would generally be regarded as an obvious breach of contract for which, by virtue of regulation 15, the tour operator will be held liable even if the hotelier supplier might not, at common law, be held vicariously liable for the same act. I would add that fairly recent developments in the common law of vicarious liability (see, for example, *Lister v Hesley Hall Limited* [2002] 1 AC 215 (HL(E) and *JGE v English Province of Our Lady of Charity & Another* [2011] EWHC 2871 (QB)) might, in any event, make it more likely that the hotelier would be regarded as vicariously liable for the criminal wrongdoing of its employees and agents.

There is very little in the way of any definitive guidance on these issues

Will regulation 15(2)(b) provide the defendant with a means to avoid a finding of liability. The tour operator may face an uphill struggle in this regard. First, regulation 15(2) may only be available where there is no fault on the part of the tour operator because the entirety of the fault (strictly the contractual default) is wholly attributable to one or other of the factors identified in regulation 15(2). Second, assailant A, by contrast to assailant B, is a hotel employee and so is connected (intimately connected) with the provision of the services that are contracted. The tour operator may, by contrast, be able to rely on regulation 15(2)(c) in the context of a violent assault, but these provisions give rise to important issues of foreseeability and this issue is considered in more detail below.

Common law: vicarious liability and duties of care

The past few years have seen a number of interesting innovations in the context of tour operator duties at common law. An over-concentration on the contractual routes to liability provided both by the Package Travel etc. Regulations 1992 and a tour operator's booking conditions can mean that claimant lawyers overlook equally fruitful options at common law

and that defendant lawyers fail to see where their client's greatest vulnerability lies (although the tour operator avoided liability in *Parker v TUI UK Limited* [2009] EWCA Civ 1261, its escape was a narrow one and the Court of Appeal expressly acknowledged that, in some circumstances, a common law duty of care might exist in the absence of a relevant contractual duty owed by the tour operator towards its consumers).

The English common law of vicarious liability has generated a large number of authorities in recent years; it is not always easy to reconcile the cases. Of most interest, perhaps, to tour operators and those who operate organised trips and expeditions overseas (schools for example) is the recent decision of Mackay J in *XVW & YZA v Gravesend Grammar School for Girls & another* [2012] EWHC 575 (QB). This action was brought by two claimants and arose out of a school trip/expedition to Belize in July/August 2005. The claimants were pupils at the First Defendant school (D1); they were aged 16 years and 15 years respectively. The Second Defendant (D2), a UK company, assisted with the planning of the expedition, as well as providing two ex-military adult staff to accompany the same.

The expedition was a developmental training experience for the participants; it was not a holiday and was not described as such in any of the defendants' promotional material. The young women who participated were actively involved in the choice, selection, planning and budgeting for the index expedition. A teacher from D1 also accompanied the expedition. During the course of the trip it was necessary for the planned itinerary to be altered as a result of a hurricane which affected the area (Mexico) to which the group intended to travel. The young women participating in the expedition were actively involved in the change of plan and the arrangements for alternative accommodation. A local Belizean company provided accommodation to members of the expedition party in return for work undertaken by the participants and an agreement to undertake trips with the Belizean company to be paid for by the participants from funds held by them. A local man (AJ) was the son of the owner of the Belizean accommodation and might have been co-owner of the resort where the group stayed.

It was necessary for the planned itinerary to be altered as a result of a hurricane

During the early hours of the morning of 1 August 2005 AJ raped the claimants and another of the young women on the expedition who was staying in the same cabana accommodation at the resort. The claimants alleged that they had sustained psychiatric injury as a result of the sexual assaults. They brought proceedings against the defendants in respect of the alleged intentional wrongdoing of AJ.

The claimants' case was that D1 and/or D2 were vicariously liable for the conduct of AJ. Alternatively, it was submitted on their behalf that the scope of D1 and/or D2's duty of care extended to the intervening criminal conduct of AJ (which was, the claimants alleged, foreseeable) and that there had been a number of causally relevant breaches of duty by D1 and D2 with respect to the planning of the expedition, the supervision of the expedition, the vetting of AJ and the security of the claimants. The claimants relied on a number of alleged incidents of inappropriate behaviour by AJ prior to the assaults (although it was denied that these incidents had come to the notice of D1 or D2's staff). The claimants also pleaded a cause of action against D2 by reference to the Package Travel etc. Regulations 1992 (specifically, Regulation 15), although this was abandoned during the course of the trial and their claims proceeded exclusively on the basis of common law causes of action.

The claimants' case faced a number of challenges. First, AJ was not employed by either defendant to

the action. He was not a 'temporary' or 'deemed' employee of either defendant (in the *Hawley v Luminar Leisure Ltd & Others* [2006] EWCA Civ 18 or any other sense). AJ was simply the son of the proprietor of resort accommodation where the claimants stayed. The defendants' staff did not direct or control his activities or conduct while the expedition made use of the accommodation. The defendants did not pay wages to AJ and had no contract with AJ. While the categories in which negligence may be established (or vicarious liability imposed) are never closed, a finding of vicarious liability would, it was argued for the defendants, have represented a significant expansion of the law.

The case law that was available suggested that vicarious liability ought not to be imposed where: (i) the principal (alleged to be D2) does not control the actor (AJ); (ii) the expedition was an undertaking where the health and safety of participants was important, but was not the only purpose of the undertaking; (iii) the activities undertaken by participants were not inherently dangerous (in this regard, the Court was referred to *Woodland v Swimming Teachers' Association & others* [2011] EWHC 2631 (QB) where, on the basis of law, authority and policy, the court refused to find a local education authority liable for the alleged negligence of a swimming pool lifeguard that it did not employ); (iv) AJ's participation in expedition activities was relatively limited and did not involve him in the performance of any pastoral role with respect to the care and welfare of the girls (this was not a case where he had any formal or other role which required him to be in their cabana after lights out – in this sense the case differed from *Lister v Hesley Hall Limited* [2002] 1 AC 215 (HL(E))).

The activities undertaken by participants were not inherently dangerous

The defendants argued that AJ's involvement was quite different in kind and substance from that of the warden of the boarding house in Lister who did have a pastoral role, but performed it in a perverse manner ("The question is whether the warden's torts were so closely connected with his employment that it would be fair and just to hold the employers vicariously liable. On the facts of the case the answer is yes. After all, the sexual abuse was inextricably interwoven with the carrying out by the warden of his duties in ... [the Boarding House]." *per* Lord Steyn in *Lister* at 230D).

In *XVW & YZA* it was held by the trial judge that there was no vicarious liability in the context of the facts of the case. The judge emphasised that his enquiry into vicarious liability was highly fact-sensitive, but also made it clear that, "Because the doctrine [of vicarious liability] imposes strict liability without proof of fault by the defendant there is high authority for the proposition that, although it can apply to relationships other than that of employment or 'servant and agent', where it is classically and most commonly found, it is a principle which has to be kept within bounds and is not 'infinitely extendable'."

This left the claimants' argument that the defendants' common law duty extended to the intervening violent wrongdoing of AJ and that they had failed in a primary duty to keep the girls reasonably safe. It was conceded that the nature of the duty was similar in respect of both defendants: effectively, a duty to act like the reasonable parent of teenage girls. In respect of D1, the school, it was argued that this duty was informed by Department for Education guidance in the form of a booklet, Health and Safety of Pupils on Educational Visits (a 1998 document that was overhauled extensively in late 2011). The difficulty that the claimants faced in this regard was, first, a reluctance, evident in the authorities (and based on policy considerations), to find a defendant liable where there was intervening criminal conduct by a third party and, second, the need to prove that such conduct was foreseeable by the defendant.

In *XVW & YZA* it was concluded by the trial judge that there was no breach of duty: (i) the scope of the duty of care was to be determined by application of the *Caparo* test: was it fair, just and reasonable for the duty to extend as far as the Claimants contended; (ii) there was no causative breach of duty. The judge directed himself that it was not alleged that AJ had a criminal record which went undiscovered or that Belize had a UK-style system of CRB checks. The local police would, if they had been consulted in advance, probably have given AJ a good character reference. The school party was continuously supervised by three experienced adults and, short of placing a guard outside each cabana occupied by the school party at the resort, there was no means by which to defeat AJ's assault (he had been careful to keep his conduct towards the young women, prior to the assaults, hidden from the adult staff). The claimants' claim against both defendants was dismissed.

The school party was continuously supervised by three experienced adults

XVW & YZA highlights, perhaps, the challenges faced by those who seek to pursue tour operators in respect of violent conduct that occurs outside the package holiday context (where the doctrine of vicarious liability cannot be relied on). The issue of foreseeability will, as I have indicated, present a major obstacle and has been considered in a large number of cases, some of them decided at the highest level. Beyond a marked reluctance to find the defendant liable (something that the cases have in common), it is not altogether easy to reconcile the authorities. On occasions, it has been concluded that no duty of care is owed by a defendant with respect to the unforeseeable acts of a third party (applying the three-stage *Caparo v Dickman* approach or a more broadly based enquiry as to whether it is fair, just and reasonable to impose a duty of care). On other occasions, the scope of the duty of care has been held not to extend to the unforeseeable (criminal) acts of third parties. On other occasions, the intervening (criminal) act has been held to break the causal chain between the alleged breach of duty by the defendant and the injury and loss sustained by the Claimant: *novus actus interveniens*. A yet further alternative is the dismissal of the claim on the basis that the injury/loss resulting from the assault is too remote to be recoverable.

In *Dickinson v Cornwall County Council* [1999] EWHC (LTL) David Steel J stated that, "There remain at large questions as to the scope of that duty, whether it had been broken and whether that breach was causative. These are interrelated questions which can only be answered on the facts of each individual case." The authors of *Clerk & Lindsell* (20th ed, 2010, paragraph 2-112) have commented similarly, "Suggestions by Lord Reid in *Dorset Yacht Co v Home Office* that the true test of *novus actus* was not whether the relevant intervention was a 'mere foreseeable possibility' but was it 'very likely or probable' should also be discounted. If intervening conduct is foreseeable, it is less likely to constitute a *novus actus* than unforeseeable conduct. The more likely the intervention the less likely it is to break the chain of causation. Foreseeability of any degree is not conclusive. The true question is whether the defendant should properly bear responsibility for the third party's intervention."

Unusual and unlikely intervening acts by third parties do not usually result in a finding of liability; the more unlikely and unusual the intervening act, the less likely that the act is foreseeable (and the less likely a finding of liability). The following cases provide a guide to the current landscape:

- *Smith v Littlewoods* [1987] 1 AC 241 (HL(Sc)): Claim for property damage resulting from fire in disused cinema premises. The claimants owned premises adjacent to the cinema. The defendant owned the cinema. The cinema was deliberately set on fire by

vandals. The defendant had no knowledge of the vandalism. The claim against the owner of the cinema (based on negligence with respect to security of the premises) was ultimately dismissed. Lord Goff referred, at p 273C, to examples of intervening acts as the "very sort of thing" which was likely and which ought to have been foreseen, but he rejected foreseeability as the sole criterion for determining whether liability should be found and endorsed the use of the duty of care as the mechanism by which the courts could identify cases where a defendant would and would not be liable for the intervening act of a third party;

- *Dickinson v Cornwall County Council* [1999] EWHC (LTL, David Steel J): The claimant was the mother of a 13 year old girl who was murdered (by a person unknown and believed to be at large) while staying in a youth hostel in Brittany. The action was brought against the local education authority for the school. The case against the defendant was based on security at the hostel and the failure to require staff to lock front and back doors at night. The claim was dismissed, " ... it is not enough, even in the context of the school pupil relationship, to escape from the implications of the usual rule that a person is not under a duty to prevent a third party from damaging another, simply to show that the action of the third party was foreseeable. An affirmative duty to prevent deliberate wrongdoing by a third party will only arise where the action is not merely foreseeable but likely to happen. It matters not whether the test is posed in terms of liability arising because the third party's action was the reasonably foreseeable consequence of the defendant's fault as being the very thing which was likely to happen, or in terms of liability not accruing because the third party action was not the very kind of thing that was likely to happen and thus broke the chain of causation between the defendant's fault and the damage." (per David Steel J citing, among other cases, Haynes v Harwood [1935] 1 KB 146 (CA), *Smith v Littlewood and Dorset Yacht v Home Office* [1970] AC 1004);
- *Mitchell & anor. v Glasgow City Council* [2009] 1 AC 874 (HL(Sc)): The claimants were the widow and daughter of a man attacked and killed by his next door neighbour. Both the deceased and the assailant were tenants of the same local authority. The assailant had previously attacked the deceased's property, had made threats to kill him and had been called to meetings organised by the defendant. The assailant attended a meeting at which he was informed by the defendant that a possession notice would be served on him. He returned home and killed the deceased. The claim (based, essentially, on the defendant's failure to warn the deceased) failed. The approach of Lord Goff in *Smith v Littlewoods*, based on the nature of the duty of care, was endorsed and applied.

The claimant was the mother of a 13 year old girl who was murdered

The House (see, the speech of Lord Hope in particular) considered the scope of the duty owed by the defendant: (1) foreseeability of harm was not itself sufficient for the imposition of a duty of care; (2) the law does not normally impose a positive duty on a person to protect others; (3) the law does not impose a duty to prevent a person from being harmed by the criminal act of a third party based simply upon foreseeability. "We are dealing here with an allegation that it was the defender's duty to prevent the risk of harm being caused to the deceased by the criminal act of a third party which they did not create and had not undertaken to avert. The point at issue is whether the defenders were under a duty in that situation to warn the deceased that there was a risk that ...

[the assailant] would resort to violence. I agree that cases of this kind which arise from another's deliberate wrongdoing cannot be founded simply upon the degree of foreseeability. If the defender is to be held responsible in such circumstances it must be because ... the situation is one where it is readily understandable that the law should regard the defender as under a responsibility to take care to protect the pursuer from that risk. [per Lord Hope at paragraph 20]" Lord Hope provided some examples of such situations: (i) cases where the defendant creates the source of the danger; (ii) where the third party who causes the damage is under the supervision or control of the defendant; (iii) where the defendant has assumed a responsibility to the Claimant *which lies within the scope of the duty which is alleged* (it is suggested that the words in emphasis are important here). In this case the House of Lords was clearly reluctant to allow the foreseeability of harm to be used as the means by which to find a local authority liable for the assailant's criminal act (if foreseeability was the only relevant criterion then the local authority might – given the facts – have been vulnerable to a finding of liability). Lady Hale described foreseeability as a necessary, but not sufficient condition for liability and stated that something more than this was needed before liability would be imposed. Nevertheless, the likelihood or otherwise of the occurrence of an act remains an important ingredient in determining whether "... *the situation is one where it is readily understandable that the law should regard the defender as under a responsibility to take care to protect the pursuer from that risk.*"

Lady Hale described foreseeability as a necessary, but not sufficient condition for liability

- *X & Y v Hounslow London Borough Council* [2009] EWCA Civ 286: This was an appeal brought by a local authority against a decision that it had negligently failed to transfer X and Y (a married couple) into temporary emergency housing before they were sexually and physically assaulted in their flat by local youths. A social worker had been aware of a previous assault on X and had informed the police and the defendant local authority. It was held that the defendant owed no duty of care in the circumstances of this case, "It follows that it can now be seen from Mitchell ... that the judge was wrong to hold ... that a high degree of foresight is required in a case of this kind. It also follows that the Council's submission to that effect must be rejected. On the other hand, it also follows from Mitchell that, if the defendant is to be held responsible in such circumstances it must be because the situation is one where it is readily understandable that the law should regard the defendant as under a responsibility to take care to protect the claimant from risk. [per Sir Anthony Clarke MR at paragraph 53]" The Court of Appeal rejected the submission that the defendant local authority had voluntarily assumed responsibility such that it was "readily understandable that the law should regard the defendant as under a responsibility to take care to protect the claimant from risk."

In the context of the school trip or other educational visit abroad (see, *XVW & YZA* and *Dickinson*) a claimant is also likely to be confronted with the argument that a liability finding will inhibit such expeditions; "It is important that standards of care for school trips, whether at home or abroad, are not set at a degree which simply results in the termination of such activities." [*per* David Steel J at p 19 of *Dickinson v Cornwall County Council* [1999] EWHC (LTL) and also section 1 of the Compensation Act 2006].

Conclusion

The framework contained in regulation 15 of the 1992 Regulations has proved to be fertile ground for a number of extensions of liability for personal injury. However, in the context of the unexpected and/or unforeseeable violent assault (even by a hotel employee), regulation 15(2)(c) may just provide the defendant with a means of escape (foreseeability – or lack of the same – proving an insurmountable hurdle for the claimant). Beyond the 1992 Regulations, the common law has adopted a rather conservative approach to injury claims arising out of violence – at least, where such claims are based on primary liability. At common law, there has been a greater willingness to expand the boundaries of the law of vicarious liability for employee wrongdoing and this form of strict liability provides, where it is available, the likeliest source of future developments. It is interesting to note that (personal injury) travel law – that most dynamic corner of the law of obligations – is in this area, as in others, at the heart of new developments in tort and contract.

Regulation 15 of the 1992 Regulations has proved to be fertile ground for extensions of liability for personal injury

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