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A Higher Duty?

The duty of care owed by hoteliers

22nd July 2021

White Lion v James [2021] 2 WLR 911

The facts:

- The claim was brought by the widow of a hotel guest who had fallen from a second floor window in circumstances which remained unclear at trial.
- He was probably sitting on the sill and holding the sash window open when he fell.

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White Lion v James [2021] 2 WLR 911

The failings alleged:

- The window was lower than modern building regulations require;
- The sash was faulty;
- There was no opening regulator.

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White Lion v James [2021] 2 WLR 911

The action:

- The widow made a claim under the Occupiers' Liability Act 1957.
- The hotel defended it on the basis that Mr James should not have been sitting on the window sill in the first place – in doing so he accepted the risk of falling.
- The hotel was Grade II listed and could not be altered to comply with modern building regulations.

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White Lion v James [2021] 2 WLR 911

The decision at first instance:

- The trial judge found that the hotelier ought have risk assessed the premises.
- Had it done so it would have identified the risk of guests falling from the window.
- It would then have taken steps to ameliorate the risk – installing an opening restrictor would have cost £7 to £8 and would have prevented the accident.
- Mr James had however contributed to the accident and damages were reduced by 60%.

White Lion v James [2021] 2 WLR 911

The decision on appeal:

- The hotelier appealed, relying on the line of authorities following *Tomlinson v Congleton BC [2004] 1 AC 46* – there is no duty to warn of an obvious risk.
- The Court of Appeal dismissed the appeal.

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White Lion v James [2021] 2 WLR 911

The decision on appeal:

- The fact that the injured party had chosen to run an obvious risk was one of a number of factors to consider when asking whether there was a duty to warn.
- There might, therefore, be circumstances in which there *is* a duty to warn of an obvious risk.
- Here there was no social utility in the configuration of the window and the problem was easily and cheaply solved.

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White Lion v James [2021] 2 WLR 911

The decision on appeal:

- The obviousness of a risk does not mean that there is no duty to warn of it – it goes to whether the duty has been breached and if so whether the breach is causative.
- The court placed considerable emphasis on the fact that the occupier was a hotelier – do hoteliers owe a higher duty than other occupiers?

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Poppleton v Trustees of the Portsmouth Youth Activities Committee [2008] 6 WLUK 277:

The decision in the Court of Appeal:

- The Claimant fell from an indoor climbing wall and sued the Defendant as occupier.
- The Court of Appeal found that where an occupier has assumed a responsibility towards a class of persons it does owe members of that class a duty to protect them against even obvious risks.

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Al Najar v Cumberland Hotel (London) Limited [2020] 12 WLUK 314:

The decision in the Court of Appeal:

- The Claimants were attacked in their hotel room by an intruder.
- The claim failed at first instance and on appeal, on the facts.
- However, the Court of Appeal endorsed the legal approach taken by the trial judge, Dingemans J.

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Al Najar v Cumberland Hotel (London) Limited [2020] 12 WLUK 314:

The approach at first instance and in the Court of Appeal: the duty:

- A hotelier owes a duty to take reasonable care to protect guests from the criminal actions of third parties.
- This is because it invites guests to its premises – it therefore assumes responsibility for them.
- The criminal act does not, therefore, break the chain of causation as a *novus actus interveniens*.

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Al Najar v Cumberland Hotel (London) Limited [2020] 12 WLUK 314:

The approach at first instance and in the Court of Appeal: breach:

- It is reasonably foreseeable that a third party might gain entry to the hotel and seek to assault or rob guests.
- The risk of this, however, was very low, which was relevant to the steps it was necessary for the hotel to take in order to discharge the duty.
- On the facts there was no causative breach.

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Claims under the Package Travel and Linked Travel Arrangements Regulations 2018:

Could these arguments be deployed in nondomestic holiday claim cases?

- There may be a duty to warn adults of obvious risks.
- Hoteliers may assume a greater responsibility for guests than other occupiers of premises (BUT BEWARE: these cases have been decided under the Occupiers' Liability Act 1957).

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Claims under the Package Travel and Linked Travel Arrangements Regulations 2018:

Could these arguments be deployed in nondomestic holiday claim cases?

How would the duty to guard against criminal actions dovetail with Regulation 16(4)?

The traveller is not entitled to compensation for damages…if the organiser proves that the lack of conformity is—

(a) attributable to the traveller;

(b) attributable to a third party unconnected with the provision of the travel services included in the package travel contract and is unforeseeable or unavoidable; or

(c) due to unavoidable and extraordinary circumstances.

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Claims under the Package Travel and Linked Travel Arrangements Regulations 2018:

Could these arguments be deployed in nondomestic holiday claim cases?

Could the Claimant in *X v Kuoni* derive any benefit from them?

What about Claimants staying in areas where the risk of intruders is well known?

Could the Claimants in the Tunisia massacre claims deploy them?

22nd July 2021

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