



Legal consequences of climbing accidents - international perspective

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Winter Sports Injuries

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Introduction

- A brief word on jurisdiction
- Duty of care
 - Applicable law
- Standard of care
 - Local standards
- Types of winter sports cases:
 - Collisions
 - Inadequate supervision
 - Defective equipment



A brief word on jurisdiction

- Pre-Brexit
 - Brussels Recast Regulation (Council Regulation (EC) No 1215/2012)
 - *FBTO v Odenbreit* (albeit in the context of an RTA and interpreting the provisions of Brussels I)
- Post-Brexit
 - *FS Cairo (Nile Plaza) LLC v Lady Brownlie (as Dependant and Executrix of Professor Sir Ian Brownlie CBE QC)* [2021] UKSC 45



Duty of Care

- Winter sports claims in England and Wales
 - Negligence
 - OLA 1957
 - Nuisance
- Winter sports claims in France
 - Article 1382 – excessive speed
 - Article 1384 – makes the skier responsible for damage caused by objects under his control



Applicable law

- Pre-Brexit:
 - Rome I and Rome II
- Post-Brexit:
 - The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019 were approved by Parliament in February 2019
- Applicable law = where the damage occurs, or is likely to occur, irrespective of the country or countries in which the act giving rise to the damage occurs (Article 4)
- Two exceptions:
 - If parties have the same habitual residence at the time of damage, the law of that country shall apply.
 - Where the tort is manifestly more closely connected to a country other than where the damage occurs (or where both parties reside), the law of that other country will apply.



Standard of care

- *Wilson v Best Travel* [1993] 1 All ER 353
 - Local standards evidence has been fundamental in claims concerning accidents abroad
- *TUI UK Limited v Lynn Morgan* [2020] EWHC 2944 (Ch)
 - Where local standards are unclear, the court would not require claimants to prove standards which are vague, nebulous or non-existent



Collisions

- Federation Internationale de Ski (FIS) Rules of Conduct
 - Breach of a rule is not negligence but evidence of negligence
- Frequent rules in collision cases:
 - Respect for others (rule 1)
 - Control of speed and movement (rule 2)
 - Overtaking (rule 4)



Inadequate supervision

- *Gouldbourn v. Balkan Holidays Ltd & Another* [2010] EWCA Civ 372
 - Claim failed owing to lack of local standards evidence
- *Anderson v Lyotier* [2008] EWHC 2790 (QB)
 - An instructor should not have led a relatively inexperienced skier off-piste



Defective equipment

- Article 5 of Rome II [Regulation (EC) 864/2007]
 - Product liability
- Articles 5(1)(a)–(c) Rome II
 - the law of the country in which the person sustaining the damage was habitually resident when the damage occurred
 - the law of the country in which the product was acquired, if the product was marketed in that country
 - the law of the country in which the damage occurred, if the product was marketed in that country



Defective equipment

- Article 5(1) of Rome II:
 - *“However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he or she could not reasonably foresee the marketing of the product, or a product of the same type, in the country the law of which is applicable under (a), (b) or (c).”*
- Article 5(2) of Rome II
 - *“Manifestly more closely connected”* escape clause.



Conclusion

- Plenty of scope to bring winter sports accident claims in the UK even post-Brexit
- Local standards evidence will be key
- Defective equipment claims may throw up difficult choice of law issues