

Washington – IBA
September, 21, 2016



PERSONAL INJURY & PACKAGE TRAVEL REGULATIONS



INTRODUCTION

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In case of death or personal injury during a travel package, the victim and/or its relatives will seek to obtain the maximum indemnity :

- **Criminal proceedings :**
 - Life endangering (Criminal Code, art. 223-1, 223-2)
 - Involuntary injury – death (Criminal Code, art. 221-6, 222-19)
- **Directing actions against multiple parties:**
 - Actual Carrier
 - Cruise Operator
 - Travel Agent
 - Crew
 - Service Provider (e.g. stevedores)

PERSONAL INJURY & TRAVEL PACKAGE REGULATIONS

I – REGIME(S) OF LIABILITY UNDER A TRAVEL PACKAGE

II – PERSONAL INJURY METHOD OF CALCULATION

I – REGIME(S) OF LIABILITY UNDER A TRAVEL PACKAGE

LEGAL FRAMEWORK

INTERNATIONAL CONVENTIONS

- 1974 Athens Convention
- 2002 Protocol

EU LAW

- EU Directive n°90/314/CEE of 13 June 1999
- EU Regulation n°392/2009 of 23 April 2009

DOMESTIC LAW

- Law n°66-420 of 18 June 1966
& Decree n°66-1078 of 31 December 1966
- Code of Transports
- Code of Tourism

THREE LEGAL REGIMES :

1. Regime of the 1966 Law/Code of Transports
2. Regime of the EU Regulation n°392/1990
3. Regime of the Code of Tourism

1. Regime of the 1966 Law/ Code of Transport :

(a) Death or personal injury caused by a shipping incident:

Presumption of liability of the Carrier

Exceptions: The casualty not attributable to his fault / fault of his servants

(b) Death or personal injury not caused by a shipping incident:

Liability for fault of the Carrier:

- Breach of his duty to keep the vessel seaworthy, appropriately armed and supplied for the voyage ;
- Breach of his obligation to exercise all due diligence to ensure the security of the passengers

Burden of proof: the Claimant

(c) Death or personal injury caused outside the sea carriage:

Strict liability of the Carrier

Exceptions: Fault of the Victim / Force majeure

2. Regime of the EU Regulation n°392/2009:

(a) Death or personal injury caused by a shipping incident:

If the loss does not exceed 250,000 SDR:

Strict liability of the Carrier

Exceptions:

- Act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;
- Wilful misconduct of a third party

If the loss exceeds 250,000 SDR:

Strict liability of the Carrier

Exceptions: The incident occurred without his fault or neglect

(b) Death or personal injury not caused by a shipping incident:

Liability for fault of the Carrier:

Burden of proof: the Claimant

3. Regime of the Code of Tourism:

Strict liability of the Organiser/Retailer

Exempting circumstances:

- Circumstance attributable to the consumer;
- Circumstance attributable to a third party unconnected with the provision of the services contracted for, and are unforeseeable or unavoidable;
- Circumstance due to a case of force majeure or to an event which the organizer and/or retailer or the supplier of services, even with all due care, could not foresee or forestall.

CODE OF TOURISM - EU DIRECTIVE n°90/314/CEE

‘Organizer’ : the person who, other than occasionally, organizes packages and sells or offers them for sale, whether directly or through a retailer.

‘Retailer’ : means the person who sells or offers for sale the package put together by the organizer.

‘Package’ :

- pre-arranged combination of at least two sorts of designated services *(transport/ accomodation/ other tourist services not ancillary to transport or accomodation)*
- when sold or offered for sale at an inclusive price ;
- and when the service covers a period of more than twenty-four hours or includes overnight accommodation:

Travel agent?

Supreme Court, 18 Oct. 2005, *M/V Dreamward* :

« The contract under which a travel agency undertakes vis-à-vis its customers to render a service comprising pre-carriage and post-carriage, sea and river cruises, excursions and accomodation constitutes a travel package as per article 2 of the law n°92-645 of 13 July 1992, so that its liability is subject to the strict liability of the said law. »

Cruise Operator ?

French courts:

- **If damage on board the vessel or related to the maritime carriage:**
 - Liability as established under the 1966 Law/Code of Transports, when the Cruise Operator is not the Sea Carrier
 - Liability as per the Law of the EU Regulation n°392/2009
- **If damage outside the vessel and not related to the maritime carriage:**
 - Liability as per the Code of Tourism

EU Regulation no.1177/2010 of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 :

'Cruise' : a transport service by sea or inland waterway, operated exclusively for the purpose of pleasure or recreation, supplemented by accommodation and other facilities, exceeding two overnight stays on board;

CJEU, 7 Dec. 2010, C-585/08 and C-144/09, *Pammer & Hotel Alpenhof*:

- *« It is not in dispute that, apart from transport, voyage by freighter involved, for an inclusive price, accommodation too and that the voyage was for a period of more than 24 hours. Accordingly, such a service fulfils the necessary conditions for a 'package' within the meaning of Article 2(1) of Directive 90/314 and falls within the definition, set out in Article 15(3) of Regulation No 44/2001 read in the light of Article 2(1) of the directive, of a contract of transport at an inclusive price.*

Therefore ...a contract concerning a voyage by freighter, such as that at issue in the main proceedings, is a contract of transport which, for an inclusive price, provides for a combination of travel and accommodation within the meaning of Article 15(3) of Regulation No 44/2001. »

Supreme Court, 9 Dec. 2015, *Costa Serena* :

- *« It is inferred from article L211-16 and article L211-1 of the Code of Tourism that any natural person or legal entity that performs an operation comprising the organisation or sale of trips or stays, individual or collective, is liable vis-à-vis the customer for the good performance of the obligations resulting therefrom.*

As a consequence the liability of the cruise operator in this respect is not subject to the proof of a contractual relationship between him and the customer. »

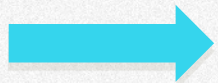
LIMITATION OF LIABILITY:

EU Directive n°314/1990/CEE:

« In the matter of damages arising from the non-performance or improper performance of the services involved in the package, the Member States may allow compensation to be limited in accordance with the international conventions governing such services. »

Code of Tourism, Art. 211:

Strict liability of the Organiser/Retailer *« subject to the limitations provided by the international conventions. »*



Limitation of liability as per the EU Regulation n°392/2009

- **2002 Protocol:**

400,000 SDR per passenger per event

- **1976 LLMC as amended by 1996 Protocol:**

175,000 SDR x the number of passengers which the ship is authorized to carry according to the ship's certificate.

- **2006 IMO Guidelines:**

Death of or personal injury to a passenger caused by war risks:

The lower of the following amounts:

- 250,000 SDR in respect of each passenger on each distinct occasion;
- 340 million SDR overall per ship on each distinct occasion.

TIME BAR:

- **If related to sea carriage: 2 years**

[EU Regulation n°392/2009 + Code of Transports]

- In the case of personal injury: from the date of disembarkation of the passenger
- In the case of death during carriage: from the date when the passenger should have disembarked
- In the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation: from the date of death, provided that this period shall not exceed 3 years from the date of disembarkation

- **If not related to sea carriage: 10 years**

[Civil Code, Art. 2226]

As of the date of consolidation of the initial or aggravated damage.



II - PERSONAL INJURY ASSESSMENT

DINTILHAC CLASSIFICATION

A. Personal Injury of the Direct Victim

1. Pecuniary Damages

(a) Temporary pecuniary damages

- Medical and hospital costs (D.S.A.)
- Miscellaneous expenses (F.D.)
- Actual loss of income (P.G.P.A.)

(b) Permanent pecuniary damages

- Future medical and hospital costs (D.S.F.)
- Costs of adapted housing (F.L.A.)
- Costs of adapted vehicle (F.V.A.)
- Assistance by third party (A.T.P.)
- Loss of future professional income (P.G.P.F.)
- Professional repercussions (I.P.)
- Impact on school/university studies or training (P.S.U.)

2. Non Pecuniary Damage

(a) Temporary Non Pecuniary Damage

- Temporary functional impairment (D.F.T.)
- Pain and suffering (S.E.)
- Temporary cosmetic injury (P.E.T.)

(b) Permanent Non Pecuniary Damage

- Permanent functional incapacity (D.F.P.)
- Loss of amenity (P.A.)
- Permanent cosmetic injury (P.E.P.)
- Sexual impairment (P.S.)
- Loss of a chance of having a family life (P.E.)
- Exceptional permanent prejudice (P.P.E.)

(c) Evolving Non Pecuniary Damage

- Damage related to evolving illness

B. Personal Injury of Indirect Victims

1. In case of death of the Direct Victim:

(a) Pecuniary Damage

- Bereavement costs (F.O.)
- Loss of earnings for the close relatives (P.R.)
- Miscellaneous costs of the close relatives (F.D.)

(b) Non Pecuniary Damage

- Support and care (P.A.C.)
- Moral harm (P.AF.)

2. In case of survival of the Direct Victim:

(a) Pecuniary Damage

- Loss of earnings for close relatives (P.R.)
- Miscellaneous costs of close relatives (F.D.)

(b) Non-Pecuniary Damage

- Moral harm (P.AF.)
- Exceptional non-pecuniary damage (P.EX).

CAPITALIZATION RATES (April 2016)

Table de survie de référence : INSEE F 2006-2008 France entière					[Sexe féminin]					taux d'intérêt = 1,04 %		Barème de capitalisation 2016									
Capital constitutif d'une rente payable à terme échu																					
Âge du bénéficiaire à la date d'attribution	Âge du bénéficiaire au dernier arrérage																				
	via- gère	69 ans	68 ans	67 ans	66 ans	65 ans	64 ans	63 ans	62 ans	61 ans	60 ans	59 ans	55 ans	50 ans	29 ans	25 ans	21 ans	20 ans	18 ans	16 ans	
0	55,272	48,071	47,635	47,191	46,739	46,279	45,812	45,337	44,854	44,364	43,866	43,361	41,266	38,483	24,791	21,805	18,690	17,890	16,265	14,605	
1	55,038	47,737	47,295	46,845	46,386	45,920	45,446	44,965	44,475	43,978	43,474	42,962	40,838	38,017	24,134	21,107	17,949	17,138	15,490	13,808	
2	54,627	47,248	46,801	46,346	45,883	45,412	44,933	44,446	43,951	43,449	42,939	42,421	40,275	37,424	23,393	20,333	17,141	16,321	14,656	12,955	
3	54,204	46,747	46,296	45,836	45,368	44,892	44,408	43,916	43,416	42,908	42,393	41,870	39,701	36,819	22,640	19,548	16,322	15,494	13,811	12,092	
4	53,776	46,241	45,784	45,320	44,847	44,366	43,876	43,379	42,874	42,361	41,840	41,312	39,120	36,208	21,879	18,754	15,494	14,658	12,957	11,220	
5	53,342	45,727	45,266	44,796	44,319	43,832	43,338	42,836	42,325	41,807	41,281	40,746	38,532	35,589	21,109	17,952	14,657	13,812	12,093	10,338	
6	52,902	45,207	44,741	44,267	43,784	43,293	42,793	42,286	41,770	41,246	40,714	40,174	37,936	34,962	20,331	17,140	13,811	12,957	11,220	9,447	
7	52,457	44,682	44,211	43,731	43,243	42,747	42,242	41,729	41,208	40,679	40,141	39,596	37,334	34,329	19,544	16,320	12,956	12,093	10,338	8,546	
8	52,007	44,150	43,674	43,190	42,697	42,195	41,685	41,167	40,640	40,105	39,562	39,011	36,726	33,689	18,749	15,491	12,092	11,219	9,446	7,635	
9	51,552	43,613	43,132	42,642	42,144	41,637	41,122	40,598	40,066	39,525	38,977	38,420	36,111	33,042	17,945	14,654	11,219	10,337	8,545	6,715	
10	51,093	43,070	42,584	42,089	41,586	41,074	40,553	40,024	39,486	38,940	38,385	37,822	35,489	32,388	17,134	13,807	10,336	9,445	7,635	5,786	
11	50,628	42,521	42,030	41,530	41,022	40,504	39,978	39,443	38,900	38,348	37,788	37,219	34,861	31,728	16,313	12,952	9,445	8,544	6,715	4,846	
12	50,159	41,967	41,471	40,966	40,452	39,929	39,397	38,857	38,307	37,750	37,184	36,609	34,227	31,060	15,484	12,088	8,544	7,634	5,785	3,897	
13	49,684	41,407	40,906	40,395	39,876	39,347	38,810	38,264	37,709	37,145	36,573	35,993	33,585	30,386	14,646	11,214	7,633	6,714	4,846	2,938	
14	49,206	40,842	40,335	39,819	39,294	38,760	38,217	37,666	37,105	36,536	35,957	35,371	32,938	29,705	13,800	10,332	6,713	5,784	3,897	1,969	
15	48,723	40,271	39,759	39,238	38,707	38,168	37,619	37,062	36,495	35,920	35,335	34,742	32,284	29,017	12,945	9,441	5,784	4,845	2,938	0,990	
16	48,236	39,695	39,177	38,651	38,115	37,569	37,015	36,452	35,879	35,298	34,707	34,108	31,624	28,323	12,081	8,540	4,845	3,896	1,969		
17	47,746	39,114	38,592	38,059	37,518	36,967	36,406	35,837	35,258	34,671	34,074	33,469	30,958	27,622	11,209	7,630	3,896	2,937	0,990		
18	47,252	38,529	38,000	37,463	36,915	36,358	35,792	35,217	34,632	34,038	33,435	32,823	30,286	26,915	10,328	6,711	2,937	1,969			
19	46,754	37,938	37,404	36,861	36,307	35,744	35,172	34,591	34,000	33,400	32,790	32,172	29,608	26,201	9,438	5,782	1,969	0,989			
20	46,252	37,342	36,802	36,253	35,694	35,125	34,547	33,959	33,362	32,755	32,139	31,514	28,923	25,480	8,538	4,844	0,989				
21	45,744	36,740	36,194	35,639	35,074	34,499	33,915	33,321	32,717	32,104	31,482	30,850	28,231	24,751	7,629	3,896					
22	45,233	36,132	35,581	35,020	34,448	33,867	33,277	32,676	32,066	31,447	30,818	30,179	27,533	24,015	6,711	2,937					
23	44,714	35,516	34,960	34,392	33,815	33,228	32,631	32,024	31,408	30,781	30,146	29,501	26,826	23,271	5,782	1,968					
24	44,191	34,896	34,333	33,759	33,176	32,583	31,979	31,366	30,743	30,110	29,468	28,815	26,112	22,519	4,844	0,989					
25	43,663	34,268	33,699	33,120	32,530	31,930	31,321	30,701	30,071	29,432	28,782	28,123	25,391	21,760	3,895						
26	43,129	33,633	33,059	32,473	31,877	31,271	30,655	30,028	29,392	28,745	28,089	27,423	24,662	20,992	2,937						

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Capital constitutif d'une rente payable à terme échu																					
Âge du bénéficiaire à la date d'attribution	Âge du bénéficiaire au dernier arrérage																				
	via- gère	69 ans	68 ans	67 ans	66 ans	65 ans	64 ans	63 ans	62 ans	61 ans	60 ans	59 ans	55 ans	50 ans	29 ans	25 ans	21 ans	20 ans	18 ans	16 ans	
0	52,104	47,083	46,706	46,318	45,920	45,510	45,091	44,661	44,222	43,772	43,312	42,843	40,871	38,200	24,729	21,765	18,664	17,867	16,246	14,589	
1	51,873	46,778	46,396	46,002	45,598	45,183	44,757	44,321	43,875	43,419	42,952	42,476	40,475	37,764	24,095	21,086	17,940	17,131	15,486	13,804	
2	51,433	46,283	45,896	45,499	45,090	44,670	44,240	43,799	43,348	42,887	42,415	41,934	39,912	37,171	23,355	20,314	17,133	16,315	14,653	12,953	
3	50,979	45,775	45,384	44,982	44,569	44,145	43,710	43,265	42,809	42,342	41,866	41,380	39,336	36,566	22,603	19,530	16,315	15,489	13,809	12,091	
4	50,518	45,259	44,864	44,457	44,040	43,611	43,172	42,722	42,261	41,790	41,309	40,817	38,752	35,953	21,842	18,736	15,488	14,653	12,954	11,219	
5	50,050	44,735	44,336	43,926	43,504	43,071	42,627	42,172	41,706	41,230	40,744	40,247	38,160	35,331	21,072	17,933	14,651	13,807	12,091	10,337	
6	49,576	44,205	43,802	43,387	42,961	42,523	42,074	41,615	41,144	40,663	40,172	39,670	37,560	34,702	20,293	17,122	13,805	12,952	11,218	9,446	
7	49,097	43,670	43,262	42,843	42,412	41,970	41,517	41,052	40,577	40,091	39,594	39,087	36,955	34,067	19,506	16,302	12,950	12,088	10,336	8,545	
8	48,612	43,128	42,716	42,293	41,857	41,410	40,952	40,483	40,003	39,511	39,009	38,497	36,343	33,425	18,711	15,473	12,086	11,215	9,444	7,634	
9	48,123	42,581	42,165	41,737	41,297	40,845	40,382	39,908	39,423	38,926	38,419	37,901	35,725	32,776	17,908	14,635	11,212	10,333	8,543	6,715	
10	47,627	42,027	41,607	41,174	40,730	40,273	39,806	39,326	38,836	38,334	37,822	37,298	35,099	32,119	17,095	13,789	10,330	9,441	7,633	5,785	
11	47,126	41,468	41,043	40,606	40,156	39,695	39,223	38,739	38,243	37,736	37,218	36,689	34,467	31,456	16,274	12,933	9,438	8,540	6,713	4,846	
12	46,622	40,904	40,474	40,033	39,579	39,113	38,635	38,146	37,645	37,133	36,609	36,075	33,829	30,786	15,445	12,069	8,537	7,630	5,784	3,897	
13	46,113	40,334	39,901	39,454	38,995	38,525	38,042	37,548	37,041	36,524	35,995	35,455	33,186	30,111	14,608	11,196	7,627	6,710	4,844	2,938	
14	45,599	39,760	39,321	38,870	38,407	37,931	37,443	36,943	36,432	35,909	35,374	34,829	32,535	29,428	13,762	10,314	6,708	5,781	3,896	1,969	
15	45,082	39,181	38,738	38,282	37,813	37,333	36,840	36,335	35,818	35,289	34,749	34,198	31,880	28,740	12,908	9,423	5,779	4,842	2,937	0,989	
16	44,563	38,599	38,151	37,690	37,217	36,731	36,233	35,722	35,200	34,666	34,120	33,562	31,220	28,046	12,046	8,524	4,840	3,894	1,968		
17	44,041	38,013	37,560	37,094	36,616	36,125	35,621	35,105	34,577	34,037	33,486	32,922	30,555	27,347	11,175	7,615	3,892	2,935	0,989		
18	43,520	37,426	36,969	36,498	36,014	35,518	35,009	34,487	33,953	33,408	32,850	32,280	29,887	26,645	10,296	6,698	2,935	1,967			
19	43,000	36,839	36,377	35,901	35,411	34,910	34,395	33,868	33,328	32,776	32,212	31,636	29,217	25,939	9,410	5,772	1,967	0,989			
20	42,477	36,248	35,780	35,299	34,805	34,297	33,777	33,244	32,698	32,140	31,570	30,988	28,541	25,227	8,514	4,836	0,989				
21	41,952	35,653	35,180	34,693	34,193	33,680	33,154	32,615	32,063	31,499	30,922	30,334	27,860	24,508	7,610	3,890					
22	41,421	35,052	34,574	34,082	33,576	33,057	32,525	31,980	31,422	30,852	30,269	29,673	27,172	23,783	6,695	2,934					
23	40,886	34,445	33,962	33,464	32,953	32,428	31,890	31,339	30,775	30,198	29,608	29,006	26,477	23,049	5,770	1,967					
24	40,348	33,834	33,345	32,842	32,325	31,794	31,250	30,693	30,122	29,539	28,943	28,334	25,776	22,310	4,835	0,989					
25	39,803	33,216	32,722	32,213	31,690	31,153	30,603	30,039	29,462	28,872	28,270	27,654	25,067	21,562	3,890						
26	39,252	32,591	32,091	31,576	31,047	30,504	29,948	29,378	28,795	28,198	27,588	26,966	24,350	20,805	2,933						



CONCLUSION

THE 2015 NEW TRAVEL PACKAGE DIRECTIVE

Directive n°2015/2302 of 25 November 2015

Entered into force on 31 December 2015

Must be transposed by 1 January 2018

Will be applicable from 1 July 2018

- Larger concept of « package », now clearly including customised combinations of travel arrangements
- New information requirements for travellers
- More predictable prices
- Stronger cancellation rights
- Clear identification of the liable party
- Clear liability for booking errors
- Clarification on essential consumer rights
- Guarantees of money-back and repatriation, in particular when the trader goes bankrupt
- New rules regarding the lack of conformity
- Less administrative burden on businesses and compliance costs for traders
- Easier cross-border transactions
- Competition in the travel market fairer



MERCI !

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