

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION

Claim No. 2020/CLE/gen/01025

BETWEEN

**ASHLEY REID-PASCARELLA
JEFFERY PASCARELLA**

Claimants

-and-

WEST BAY MANAGEMENT LIMITED
(d/b/a Sandals Royal Bahamian Spa & Resort Offshore Island)

Defendant

Before: The Honourable Justice Darron D. Ellis

Appearances: Marco Turnquest with Chizelle Cargill for the Defendant
Carl Bethel with Shelly-Ann Nairn for the Claimants

Hearing Date(s): 21 October 2025, 16 January 2026, 14 August 2026

JUDGMENT

Preliminary issues — Consumer resort booking — Contractual terms communicated through authorised travel intermediaries — Notice of onerous terms — Six-month notice requirement — One-year contractual time bar — Consumer-protection legislation — Contractual claims involving personal injury and consequential loss — Limitation Act 1995, sections 9 and 10 — Three-year limitation period — Date of knowledge — Exclusive jurisdiction — Distinct scope of booking and registration clauses.

The Claimants reserved a stay at the Defendant's Bahamian resort through travel intermediaries. The terms and conditions of the stay required written notice of specified claims to the Defendant's representative within six months and commencement of proceedings within one year.

The First Claimant alleged that she was indecently assaulted by the butler assigned to the Claimants during their stay. Both Claimants sought damages arising from the alleged incident and the pleaded breaches of duty, including damages for psychiatric injury, consequential losses and recovery of the wedding-package expenditure. The alleged incident occurred on or about 15 April 2016. This action was commenced on 14 October 2020.

The Defendant relied on the contractual time restrictions and the statutory limitation period. The Claimants disputed the incorporation and enforceability of the restrictions and contended that their contractual claims attracted the ordinary six-year limitation period. The Court also considered the scope and enforceability of the jurisdiction provisions in the terms and conditions and the signed On Resort Guest Registration form.

Held: The action is dismissed as statute-barred, with costs to the Defendant. The contractual one-year commencement condition does not provide the basis for dismissal. The Court concludes that section 9 of the Limitation Act 1995 applies to the action as pleaded and that the proceedings were commenced outside the applicable three-year period. No statutory postponement has been established. The Court makes no finding on the alleged assault or substantive liability.

1. Delivery through the Claimants' authorised travel intermediaries was sufficient to communicate the UTC terms and conditions. Their failure personally to read those terms was not determinative. Receipt of the documents did not, however, conclusively establish that sufficient notice had been given of the particular one-year commencement condition. An unusual or onerous term requires notice commensurate with its nature and effect: **Thornton v Shoe Lane Parking Ltd** [1971] 2 QB 163 and **Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd** [1989] QB 433, considered. Whether that condition was incorporated did not require final determination because, even assuming incorporation, it was unenforceable.
2. The six-month written-notice requirement and the one-year commencement condition required separate consideration. Under the alternative assessment in **section 46** of the **Consumer Protection Act 2007**, the notice requirement was reasonable as a means of facilitating prompt investigation; that conclusion did not establish the enforceability of its absolute "no suit" sanction. The one-year commencement condition could not restrict personal-injury negligence liability protected by **section 40(1)**, or liability for a pleaded breach of contract protected by **section 41(a)** of the **Consumer Protection Act**. Alternatively, the Defendant had not established its reasonableness, and the condition created a significant imbalance contrary to good faith in the non-negotiated consumer contract. **Director General of Fair Trading v First National Bank plc** [2001] UKHL 52 and **George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd** [1983] 2 AC 803 were considered. **Metalimex Foreign Trade Corporation v Eugenie Maritime Ltd** [1962] 1 Lloyd's Rep 378 and **Babanaft International Co SA v Avant Petroleum Inc (The**

Oltenia) [1982] 1 WLR 871, concerning commercial time bars, were distinguished. Neither contractual restriction provided the basis for dismissal.

3. Clause 18 of the terms and conditions was expressed broadly enough to encompass the pleaded claims relating to the alleged assault, psychiatric injury and consequential losses, notwithstanding their contractual form. The claim for recovery of the wedding-package expenditure was advanced by reason of the same alleged breaches and incident. The breadth of clause 18 did not establish its enforceability: although the claims fell within its intended scope, its one-year commencement condition could not dispose of the action.
4. **Section 9** of the **Limitation Act 1995** applies to an action for breach of duty, including a duty arising by contract, where the damages consist of or include damages in respect of personal injury. Psychiatric injury falls within the statutory definition of personal injury. The contractual form of the claims and inclusion of consequential financial losses did not displace the three-year period. Both Claimants' claims arose from the same alleged incident and pleaded breaches of duty; they did not advance a distinct contractual claim for economic loss independent of the alleged personal injury. The limitation conclusion therefore applied to both claims: **Howe v David Brown Tractors** [1991] 4 All ER 30, **Walkin v South Manchester Health Authority** [1995] 1 WLR 1543 and **Foster v Zott GmbH & Co** [2000] EWCA Civ J0524-5, considered
5. Under **sections 9** and **10** of the **Limitation Act 1995**, the relevant knowledge concerned the material facts, not their legal significance. Those facts were known in 2016, with significant psychiatric injury known no later than May 2016. Even adopting that later date, the three-year period expired no later than May 2019, before this action was commenced on 14 October 2020. No postponement by reason of disability under **section 36**, or fraud, mistake or deliberate concealment under **section 41**, was established. Both claims were therefore statute-barred.

Cases referred to: **Thornton v Shoe Lane Parking Ltd** [1971] 2 QB 163; **Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd** [1989] QB 433; **Metalimex Foreign Trade Corporation v Eugenie Maritime Ltd** [1962] 1 Lloyd's Rep 378; **Babanaft International Co SA v Avant Petroleum Inc (The Oltenia)** [1982] 1 WLR 871; **George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd** [1983] 2 AC 803; **Director General of Fair Trading v First National Bank plc** [2001] UKHL 52; **Howe v David Brown Tractors** [1991] 4 All ER 30; **Walkin v South Manchester Health Authority** [1995] 1 WLR 1543; **Foster v Zott GmbH & Co** [2000] EWCA Civ J0524-5; **Donohue v Armco Inc** [2001] UKHL 64; **A v Hoare** [2008] UKHL 6 and **Stubblings v Webb** [1993] AC 498.

Ellis J,

Introduction

- [1.] This judgment determines four preliminary issues concerning the contractual terms said to govern the Claimants' stay at the Defendant's Sandals Royal Bahamian Spa & Resort Offshore Island. By express agreement, the parties enlarged Preliminary Issue 3 to include the applicability and effect of **section 9 of the Limitation Act 1995**.
- [2.] The substantive action arises from the First Claimant's allegation that, during the Claimants' stay in April 2016, she was indecently assaulted by Moral Adderley, an employee of the Defendant assigned to serve as their butler.
- [3.] The Defendant relies on terms and conditions supplied by Unique Travel Corp ("UTC") through the travel intermediaries involved in the booking. Those terms and conditions required written notice of specified claims within six months and commencement of proceedings within one year. The Defendant also relies on jurisdiction provisions in the UTC terms and conditions and in the On Resort Guest Registration form which restrict legal jurisdiction to The Bahamas.
- [4.] The Claimants dispute the incorporation and enforceability of the material terms. They contend that the restrictions were not sufficiently brought to their attention and are unenforceable under the applicable consumer-protection legislation. They further contend that the surviving contractual claim attracts the ordinary six-year limitation period rather than the period prescribed by **section 9 of the Limitation Act 1995**.
- [5.] The Court determines only the preliminary issues. Findings concerning the booking documents, notice and knowledge do not determine whether the alleged assault occurred or whether the Defendant bears substantive liability.
- [6.] The Claimants commenced this action by Writ of Summons filed on 14 October 2020. They filed their Statement of Claim on 9 December 2020 and their Amended Statement of Claim on 16 March 2021. The Defendant filed its Amended Defence on 30 March 2021.

The Preliminary Issues

- [7.] The four preliminary issues are:

Preliminary Issue 1- Whether the limitation provisions outlined in the terms and conditions of Unique Travel Corp ("terms & conditions"), requiring the Claimants to 1) give written notice of their claim to Unique Travel Corp within six months after their alleged incident or injury giving rise to this action, and 2) commence an action in The Bahamas within one year after the alleged incident or injury giving rise to this action, are reasonable and enforceable?

Preliminary Issue 2- Whether providing the terms & conditions to the Claimants' agent was sufficient for them to be binding on the Claimants?

Preliminary Issue 3- Whether the limitation provision, contained in the terms & conditions, applies to the Claimants' Claim?

Preliminary Issue 4 - Whether the exclusive jurisdiction clauses set out in the terms & conditions and the Defendant's On Resort Guest Registration terms & conditions and relied on by the Defendant in its Amended Defence, are reasonable and enforceable.

Agreed Facts and Procedural Background

[8.] The Claimants are citizens and residents of the United States of America. The Defendant, West Bay Management Limited, trading as Sandals Royal Bahamian Spa & Resort Offshore Island, is incorporated in The Bahamas and operates a resort on New Providence. The Defendant is affiliated with Sandals Resorts International Ltd ("SRI"), a Jamaican company providing professional and management services to Sandals entities and resort operators. UTC, incorporated in Panama, is SRI's worldwide representative and a tour operator that creates package vacations for it. Travel Impressions Ltd. is a New York-based tour operator; D'Amico Travel is a New Jersey-based travel agency. Moral Adderley is a former Sandals butler.

[9.] On or about 17 July 2015, the Claimants reserved, via D'Amico Travel and Travel Impressions with UTC, a stay in the Balmoral Honeymoon Beachfront Butler Suite at Sandals from 12 to 19 April 2016. During the booking process, UTC supplied the Claimants with an invoice containing terms and conditions via Travel Impressions Ltd. The terms and conditions purported to confer enforceable benefits on UTC and specified hotel-related entities, including the Defendant. Whether delivery to the Claimants' agents bound the Claimants, and whether the relevant terms are enforceable and applicable to this claim, are matters for determination, not agreed conclusions.

[10.] Clause 18 of the terms and conditions states that a suit against specified hotel-related parties concerning personal injury, illness, death or property loss is not maintainable unless written notice from the guest with particulars is received by UTC within six months of the specified event or onset, and that such a suit must be commenced within one year. The terms and conditions also contain a forum-selection provision. The effect of those provisions remains disputed.

[11.] On 12 April 2016, the Claimants checked in to the Defendant's resort and were provided with, and signed, its On Resort Guest Registration Form, which contains further terms & conditions. Those terms and conditions contain another forum-selection provision selecting Bahamian law and the courts of The Bahamas for claims connected with the guests' stay. The effect and enforceability of that provision remain in issue.

[12.] The Claimants allege that Mr Adderley assaulted the 1st Claimant on or about 15 April 2016. On 12 June 2019, the Claimants filed an Amended Complaint in the United States District Court for the Southern District of New York, joining the Defendant and seeking damages for the alleged assault. On 4 March 2020, District Judge Analisa Torres dismissed the claim against the Defendant for lack of personal jurisdiction. On 14 October 2020, the Claimants commenced the present Bahamian action by a Generally Endorsed Writ of Summons. The Defendant entered an appearance on 11 November 2020.

[13.] The Claimants filed their Statement of Claim on 9 December 2020 and an Amended Statement of Claim on 16 March 2021. The Defendant filed its Defence on 22 December 2020 and its Amended Defence on 30 March 2021. It denies liability for the alleged assault and relies, among other matters, on UTC's contractual limitation provisions and the Limitation Act 1995. By order of this Court dated 25 February 2025, the Defendant obtained leave for trial of four preliminary issues.

The Affidavit Evidence

The Defendant's Affidavit Evidence

[14.] The Defendant relies upon the affidavit of Kevin Clarke in support of its application for the determination of four preliminary issues. The deponent explains that UTC is the worldwide representative of Sandals and Beaches Resorts. The Claimants arranged their reservation through D'Amico Travel, a New Jersey travel agency, which booked their stay through Travel Impressions Ltd., a New York-based tour operator. Travel Impressions thereafter made the booking with UTC.

[15.] According to the Affidavit, UTC issued an invoice to Travel Impressions Ltd. containing the applicable terms and conditions. The invoice expressly warned that it contained terms affecting the guests' legal rights. Clause 2 provided that any tour operator or travel agent used by a guest to make a reservation was, for the purposes of the booking, the guest's agent and was authorised to receive notice of the agreement on the guest's behalf. The Defendant accordingly contends that delivery of the terms and conditions to Travel Impressions constituted sufficient notice to the Claimants. The deponent further states that neither the Claimants nor their travel agents objected to the terms and conditions or exercised the available option to cancel the reservation.

[16.] The affidavit further states that, upon checking into the resort, the Claimants received and signed a separate On Resort Guest Registration form containing further terms and conditions, which the Defendant relies on.

[17.] The deponent adds that clause 18 of the terms and conditions is of particular significance, as it required written notice of a personal injury claim to be provided to UTC within six months and proceedings to be commenced within one year. The deponent states that the Claimants did neither. The Defendant therefore contends that,

if clause 18 is reasonable, enforceable and applicable to the claim, the proceedings are contractually time-barred. The deponent also states that contractual limitation provisions of this nature are common within the resort industry and refers, by way of comparison, to terms employed by Atlantis Paradise Island and Baha Mar.

[18.] The affidavit records that the Claimants had previously challenged the limitation provisions of the terms and conditions as unfair and onerous and as not having been sufficiently brought to their attention. The Court dismissed their application to strike out the relevant portions of the Amended Defence on 22 March 2024, determining that the matter was not appropriate for disposal by way of strike out.

[19.] The Court heard evidence from the Claimants and Delano Moss.

The Trial Evidence

Ashley Reid-Pascarella

[20.] According to evidence of the First Claimant, she was the principal organiser of the destination wedding. She researched Sandals' online wedding offerings, reviewed resort and accommodation options, and participated in selecting the Royal Bahamian resort. Her evidence was that her attention was directed to the promised quality of the wedding, accommodation and butler services rather than to legal terms.

[21.] The First Claimant said that the documents she received from D'Amico Travel and Travel Impressions Ltd. did not refer her to the UTC terms and conditions. She also said that, when she searched the Sandals website in 2015, she was not directed to read or accept those terms before selecting the package. She accepted that she was generally aware that terms and conditions existed, but maintained that she had not seen or read the UTC document before the dispute arose. She explained that the Second Claimant signed electronically for both of them. When the Court asked whether she objected to him signing on her behalf, she said she did not. She ultimately accepted that he was authorised to do so.

[22.] In cross-examination, the First Claimant accepted that she did not send the notice prescribed by clause 18 to UTC within six months and did not commence an action in The Bahamas within one year. Her evidence was that the alleged assault was immediately known, and that complaints were made to resort management and the police. She said resort management took her statement on the wedding day, and her pleading alleges that psychological treatment began in May 2016.

[23.] I accept the First Claimant's evidence that she did not personally read the applicable clauses before travelling and that the one-year contractual time bar was not specifically highlighted to her. I also accept her concessions concerning the Second Claimant's authority to sign the On Resort Guest Registration form and concerning non-

compliance with the contractual periods. Her subjective failure to read the UTC terms and conditions does not determine incorporation, but it is relevant to prominence, open dealing and reasonableness.

Jeffery Pascarella

[24.] The Second Claimant confirmed that the First Claimant undertook most of the initial research and organisation, while they jointly reviewed the options and selected the resort. His witness statement focused mainly on the alleged incident and the resort's response. He gave little direct evidence about what D'Amico Travel or Travel Impressions Ltd. transmitted during the booking process.

[25.] In oral evidence, the Second Claimant accepted that he signed the On Resort Guest Registration form for himself and the First Claimant. During cross-examination, the Second Claimant accepted that no Bahamian action was filed within one year. He maintained, however, that he had not seen the clauses in question when he made the booking. He testified that, after the alleged incident, he went to resort management and sought assistance. He said that management had an immediate opportunity to investigate but failed to take steps which he considered necessary, including preserving recordings and obtaining medical assistance.

[26.] I accept his evidence insofar as it confirms the Claimants' contemporaneous complaint, their knowledge of the alleged incident and assailant, and non-compliance with the one-year commencement requirement. His evidence does not prove or disprove transmission of the pre-arrival terms.

Delano Moss

[27.] Mr Moss is the Defendant's hotel manager. He joined the Sandals organisation in 1998 and had substantial operational experience in Jamaica, Saint Lucia and The Bahamas. I accept that he was generally familiar with Sandals' booking practices and the institutional roles of UTC, Travel Impressions and retail travel agents.

[28.] Mr Moss was not stationed at the Bahamian resort in 2016 and had no first-hand knowledge of the Claimants' reservations or stay. He derived his account of this transaction from documents, a declaration used in the United States proceedings, information supplied by UTC, and his understanding of ordinary practice. He explained that, in the usual course, a guest's travel agent acts as the guest's primary contact; reservations are transmitted through the tour operator to a unique entity; payment and booking documents move through that chain; and the unique entity generally does not communicate directly with the guest.

[29.] Mr Moss said that he believed UTC would have supplied Travel Impressions Ltd. with the invoice and drawn the terms and conditions to its attention. The language of

his statement, “would have provided” and “usual course”, reveals that this was an inference from regular practice, not recollection of a contemporaneous event. When pressed for direct evidence that the UTC document was delivered, Mr Moss relied upon the fact that the Claimants arrived at the resort after completing the ordinary booking process. He said that the transfer of information and terms “cannot happen any other way.” I regard that answer as evidence of his understanding of ordinary practice, not proof of the particular act of transmission.

[30.] Mr Moss’s evidence explained the booking channel but did not establish why a six-month notice provision was necessary, why proceedings had to be commenced within one year, or what incremental prejudice arose solely from proceedings being commenced after one year. No first-hand evidence was given from the person who selected or administered that period.

[31.] I accept Mr Moss as an honest witness with substantial operational experience. I accept his evidence about the general structure of the booking process. I attach limited weight to his transaction-specific conclusions where they depend upon presumed regularity rather than direct records. The agreed fact that UTC provided the Claimants, through Travel Impressions, with an invoice containing the terms supplies the stronger foundation for incorporation. His evidence does not, by itself, discharge the Defendant’s burden of establishing the fairness and necessity of the one-year bar.

[32.] The documentary record is important in resolving the limits of the oral evidence. The Agreed Statement filed on 3rd April 2025 records that UTC provided the Claimants, through Travel Impressions, with an invoice containing the terms and conditions. I treat that as an agreed fact notwithstanding the Claimants’ lack of recollection. The booking documents show that the Claimants chose D’Amico Travel; D’Amico dealt with Travel Impressions; and Travel Impressions dealt within the Sandals/UTC booking structure. This supports the authority to receive ordinary booking documents.

[33.] The materials establish the existence and transmission of terms but do not demonstrate that the unusual consequence of complete contractual time bar after one year was separately or conspicuously highlighted to the Claimants personally.

[34.] It is undisputed that the alleged incident occurred in April 2016 and that the Bahamian action commenced on 14 October 2020. My principal evidential findings are therefore:

- a. the UTC terms and conditions were transmitted within the authorised booking chain and were sufficiently incorporated as a matter of ordinary notice;

- b. the one-year contractual time bar was not individually negotiated or specifically highlighted to the Claimants;
- c. the hotel had contemporaneous notice of the alleged incident and an immediate opportunity to investigate;
- d. the Defendant did not provide evidence demonstrating why commencement within one year, in addition to six-month notice, was necessary or what additional prejudice followed from later commencement;
- e. the Claimants knew the alleged incident, the alleged assailant's identity and employment role, and the essential facts supporting an action in April 2016; and
- f. the First Claimant knew of significant psychological injury no later than May 2016.

[35.] The following provisions are set out in the 2015 terms & conditions:

"Important: these terms and conditions govern the contract for hotel accommodations, transportation, and other services between you and anyone travelling with you (collectively and individually "guest") and Unique Travel Corp. (Unique Travel). Please read these terms and conditions carefully. Your acceptance of tickets or vouchers from unique travel constitutes acceptance of these terms and conditions (the "Contract").....

Clause 1:

"These terms and conditions shall supersede and/or override any representations contained in any advertising and promotional materials to the extent of any inconsistency."

Clause 2:

"Travel Agents: Any travel agent used by Guest to make reservations is, for all purposes, Guest's agent, and represents that the Travel Agent has the authority to receive notice of these terms and conditions on behalf of the Guest. Guest's travel agent agrees also to promptly notify a Guest of these terms and conditions.

Neither Unique Travel nor the Hotel shall be liable for any representations made by Guest's travel agent. No travel agent has the authority to modify or waive these terms and conditions.

Clause 17B:

“ Claims which include hotel and/or Sandals Resorts International Sri Ltd. the foregoing in paragraph 17a. Notwithstanding, any claims whatsoever arising from, in connection with, or incidental to any personal injury, illness or death, that include any claim whatsoever against Sandals Resorts International Sri Limited or the hotel, hotel management company, and/or their affiliates, subsidiaries, directors, officers or employees and to which claim unique travel is also a party, shall be litigated solely and exclusively in the courts of the country in which the hotel is physically located and governed exclusively by the laws of the country in which the hotel is physically located.”

[36.] Clause 18 of the 2015 terms & conditions provides that:

Limitations Periods: No suit shall be maintainable against Unique Travel, any Hotel or Hotel Management Company, SRI, their Affiliates, Subsidiaries, Directors, Officers, or agents relating to personal injury, illness or death or loss or damage to property, unless written notice of the claim, with particulars, is addressed to Unique Travel Corp. Attention: Claims, Calle Aquilino De Guardia, No. 8, Igra Building, Panama, Republic of Panama and is received within six months after the death or loss or damage to property, or the onset of the injury or illness. In no event shall such suit be maintainable unless commenced within one year after the death, loss or damage to property, or the onset of the injury or illness.

The Defendant's Submissions

[37.] The Defendant submits that the UTC terms and conditions formed part of the booking contract because they were supplied to the travel intermediaries authorised to make the Claimants' reservation. It relies on the invoice's warning that the terms might affect guests' legal rights and argues that the intermediaries' knowledge is attributable to the Claimants. On that basis, it says the Claimants are bound by the terms whether or not they personally read them. It further relies on the forum-selection provision the Claimants signed when they checked in.

[38.] The Defendant contends that the notice and commencement requirements in the terms and conditions are reasonable means of securing prompt investigation and finality, and that the claims, whether framed in contract or tort, arise from the alleged assault and fall within the provision concerning personal injury. It says the Claimants neither gave the stipulated written notice to UTC nor commenced proceedings within one year. It also argues that Bahamian courts are the appropriate forum for an incident alleged to have occurred at a Bahamian resort. The Defendant accordingly seeks dismissal of the claims.

The Claimants' Submissions

[39.] The Claimants submit that the clauses imposing a six-month notice requirement and a one-year bar to proceedings were not sufficiently drawn to their attention. They

rely on the particular-notice principle applicable to onerous standard terms and dispute that transmission through travel intermediaries, without more, made those restrictions binding and enforceable. They also contend that an alleged assault by the butler assigned to the First Claimant engages the Defendant's contractual and vicarious liability.

[40.] The Claimants further submit that the restrictions offend the Bahamian statutory controls on exclusion or restriction of liability and constitute unfair, non-negotiated consumer terms. They argue that the signed on-resort forum provision was presented only after arrival, when refusal would have exposed them to forfeiture of the price paid. They argue that the Defendant cannot rely on any of the challenged clauses to defeat the action.

The Preliminary Issues

Preliminary Issue 2- Whether providing the terms & conditions to the Claimants' agent was sufficient for them to be binding on the Claimants?

[41.] I address Preliminary Issue 2 first because incorporation is logically anterior to enforceability. A contractual term may be incorporated but nevertheless invalid or unenforceable under statute. Where terms are unsigned, the proponent must take reasonable steps to bring them to the other party's attention before or at the time of contracting. The more unusual or onerous the term, the greater the notice reasonably required. **Thornton v Shoe Lane Parking Ltd** [1971] 2 QB 163 illustrates that a particularly restrictive personal-injury term must be fairly communicated before the contract is concluded. **Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd** [1989] QB 433 similarly holds that an unusual or onerous standard term requires a commensurate degree of notice. Those authorities do not require proof that the contracting party actually read the term. The inquiry is objective: whether reasonable notice was provided in the circumstances.

[42.] The Claimants selected and used D'Amico Travel to arrange the booking. The transaction proceeded through Travel Impressions to UTC. Those intermediaries were authorised to communicate booking information, receive invoices and contractual documents, and complete the reservation. Receipt of terms governing the booked accommodation and related services fell within the ordinary scope of that authority.

[43.] The agreed transmission of the invoice through the authorised booking chain establishes receipt of the UTC terms and conditions by the Claimants' authorised intermediaries. Delivery through those intermediaries was a sufficient means of communicating the contractual documents to the Claimants. It does not, however, establish, without more, that every provision in those documents was incorporated into the contract. In particular, the one-year commencement restriction requires separate consideration because of its onerous consequence: preventing an otherwise maintainable claim from proceeding after one year. It is unnecessary to determine

whether sufficient notice was given to incorporate that restriction because, even assuming that it was incorporated, I conclude under Preliminary Issue 1 that it is unenforceable. I therefore determine Preliminary Issue 2 only to the extent that delivery to the Claimants' authorised intermediaries constituted delivery to the Claimants. I make no determination whether the one-year restriction was incorporated, and delivery alone does not establish that it was binding on them.

Preliminary Issue 1- Whether the limitation provisions outlined in the terms and conditions of Unique Travel Corp, requiring the Claimants to 1) give written notice of their claim to Unique Travel Corp within six months after their alleged incident or injury giving rise to this action, and 2) commence an action in The Bahamas within one year after the alleged incident or injury giving rise to this action, are reasonable and enforceable?

[44.] Preliminary Issue 1 concerns two conditions in clause 18 of the UTC terms and conditions: written notice of a claim with particulars addressed to and received by UTC within six months, and commencement of suit within one year. Although contained in the same clause, the conditions perform different functions and require separate conclusions.

[45.] The Defendant submits that clause 18 regulates procedure, not liability. The Claimants answer that its practical effect is to deprive them of a remedy otherwise available. Neither the description "procedural" nor the fact that the clause is expressed as a condition governing suit determines the statutory question. The Court must consider its legal operation in relation to the particular claim against which it is invoked.

[46.] A contractual time bar is not invalid merely because it is shorter than the statutory limitation period. **Metalimex Foreign Trade Corporation v Eugenie Maritime Ltd** [1962] 1 Lloyd's Rep 378 and **Babanaft International Co SA v Avant Petroleum Inc (The Oltenia)** [1982] 1 WLR 871 recognise legitimate commercial interests in prompt notification and finality. Those authorities do not displace applicable consumer-protection legislation. Nor does a provision effective in a negotiated commercial charterparty necessarily satisfy the statutory controls applicable to a consumer booking on standard terms.

[47.] The contract was concluded in 2015. I consider the statutory provisions applicable to the contract at that time, rather than determine the parties' rights by reference to the Consumer Protection Act 2023. The parties' positions concerning incorporation and statutory enforceability must also be distinguished: incorporation of the UTC terms and conditions does not, without more, establish that each provision in them is enforceable.

Consumer Protection Statutes

[48.] The contract in the present case was made in 2015. The applicable legislation is therefore the **Consumer Protection Act 2007**. For completeness, I observe that the

material statutory protections considered below have been substantially retained in the **Consumer Protection Act 2023**: **section 40** of the **2007 Act** corresponds to **section 53** of the **2023 Act**; **section 41** corresponds to **section 54**; and the statutory requirement of reasonableness contained in **section 46** corresponds to **section 60** of the **2023 Act**. However, the Court determines the parties' rights by reference to the legislation applicable when the contract was concluded.

Section 40 of the Consumer Protection Act 2007

[49.] **Section 40**, on the statutory wording relied upon in the submissions, prohibits a person from excluding or restricting, by contractual term or notice, liability for death or personal injury resulting from negligence. It reads as follows:

*40. (1) A person shall not by reference to —
(a) any term of a contract;
(b) a notice given to persons generally; or
(c) particular persons,*

exclude or restrict his liability for death or personal injury resulting from negligence.

(2) In the case of other loss or damage, a person shall not so exclude or restrict his liability for negligence except in so far as the term or notice satisfied the requirement of reasonableness as provided for in section 17.

(3) Where a term of a contract or notice purports to exclude or restrict liability for negligence, the fact that, that person agrees with it or is aware of it is not of itself to be taken as indicating his voluntary acceptance of any risk.

[50.] It is directed to the effect of the term on liability of that description. The first question is whether clause 18 applies to a claim for personal injury resulting from negligence; the section is not an automatic answer to every cause of action arising out of an alleged assault. I answer this question in the affirmative. The action, as it stands despite its explicit contractual pleadings, is grounded in personal injury, namely the assault by the butler. The Court views the action as a hybrid involving tort and contract. **Section 40 (1)** is therefore relevant.

[51.] As applied to an otherwise maintainable personal-injury negligence claim, the one-year condition would prevent proceedings from being maintained once that period had expired. In my judgment, that is, in substance, a restriction of the liability protected by **section 40(1)**, notwithstanding the condition's procedural form. I therefore find that **section 40(1)** prevents reliance on the one-year commencement condition to defeat a claim within that provision's scope.

[52.] The six-month written-notice condition likewise uses the language "no suit shall be maintainable." If its statutory effect is the same—an absolute bar to an otherwise valid personal-injury negligence claim—the distinction between notice and commencement does not, by itself, take it outside **section 40(1)**. Accordingly, my finding below that

notice is a reasonable investigatory requirement does not establish that it is enforceable as an absolute bar to such a claim.

Section 41 of the Consumer Protection Act 2007

[53.] **Section 41(a)**, on the statutory wording relied upon in the submissions, prohibits exclusion or restriction of liability for breach of contract. It reads as follows:

41. No party to a contract shall —

(a) when he is in breach of contract, exclude or restrict his liability in respect of the breach; or

(b) claim to be entitled to render —

(i) a contractual performance substantially different from that which was reasonably expected of him; or

(ii) no performance in respect of the whole or any part of his contractual obligation, except in so far as the contract term satisfies the requirement of reasonableness.

[54.] The subsection as quoted contains no qualification by reasonableness. If a term falls within **section 41(a)**, a finding that the term was reasonable cannot cure its prohibited operation.

[55.] **Section 41(a)** must nonetheless be applied to the liability alleged, not simply to the presence of a contract containing clause 18. The claim for damages for an alleged assault cannot be treated as a claim for breach of contract without identifying the contractual obligation alleged to have been broken, and the party said to have broken it. To the extent that a pleaded and otherwise maintainable claim does allege breach of contract by a person entitled to rely on clause 18, the condition “no suit shall be maintainable,” if applied to extinguish that liability, would restrict liability in respect of the breach and would be prohibited by **section 41(a)**. I do not rely upon **section 41(a)** as an independent ground for disposing of the personal-injury tort claim merely because that claim arose during a stay booked under a contract.

[56.] My finding under **section 41** is therefore distinct from that under **section 40**: **section 40** addresses personal injury resulting from negligence; **section 41(a)** addresses liability for breach of contract. Neither provision may be extended to a different cause of action without examining its terms and the pleaded basis of liability. Where either absolute prohibition applies, the alternative discussion of reasonableness below does not override it.

Section 46: alternative assessment of reasonableness

[57.] If a condition in clause 18 is capable of operating consistently with **sections 40 and 41** and is subject to the requirement of reasonableness in **section 46** of the **2007 Act**, I assess it separately under that provision. **Section 46** reads as follows:

46. (1) The requirement for reasonableness in relation to a contract term, is that the term is a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.

(2) The requirement of reasonableness in this Act in relation to a notice (not being a notice having contractual effect), is that the notice should be fair and reasonable to allow reliance on it, having regard to all the circumstances when the liability arose or (but for the notice) would have arisen.

(3) Subsection (4) applies in any case where, by reference to a contract term or notice, a person seeks to restrict liability to a specified sum of money, and the question arises (under this or any other Act) whether the term or notice satisfies the requirement of reasonableness.

(4) Regard shall be had in particular (but without prejudice to subsection (2) in the case of a contract term) to —

(a) the resources which the person could expect to be available to him for the purpose of meeting the liability if it arises; and

(b) how far it was open to that person to cover himself by insurance.

(5) It is for those claiming that a contract term or notice satisfies the requirement of reasonableness to show that it does.

[58.] The question is whether it was fair and reasonable to include the term having regard to circumstances known, or which ought reasonably to have been known or contemplated, when the contract was made. The burden of establishing reasonableness rests on the party relying on the term. This alternative analysis does not assume that **section 46** supplies a defence to an absolute prohibition in **sections 40(1) or 41(a)**.

[59.] The leading authorities on the statutory requirement of reasonableness are **Director General of Fair Trading v First National Bank plc** [2001] UKHL 52, [13]–[17] and **George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd** [1983] 2 AC 803. In **George Mitchell**, the House of Lords treated reasonableness as a fact-sensitive evaluative judgment in which the court weighs the relevant circumstances and determines whether reliance upon the particular limitation is fair and reasonable. Lord Bridge explained the nature of the reasonableness inquiry at 815–816. His Lordship observed that, in determining whether the requirement of reasonableness has been satisfied:

“the court must entertain a whole range of considerations, put them in the scales on one side or the other and decide at the end of the day on which side the balance comes down.”

[60.] The six-month notice condition directly serves the legitimate purpose of enabling investigation while events remain fresh. I find, as a matter of the alternative **section 46** assessment, that a requirement for timely written notice with particulars was fair and reasonable to include when the booking was made. The fact that this incident was reportedly drawn promptly to the resort’s attention does not retrospectively determine that assessment. Nor does this finding establish that written notice addressed to and received by UTC was given, or that the condition’s absolute “no suit” consequence is permitted by **section 40** or **41** where those provisions apply.

[61.] The additional one-year commencement condition is different. Even after notice has been given and investigation has become possible, it purports to prevent any suit from being maintained after one year. The Defendant has not established why timely notice alone was insufficient to serve its investigatory interest or why that interest required proceedings, as distinct from notice, within one year. I weigh the non-negotiated consumer setting, the breadth of claims covered, the loss of the remedy and the Defendant’s legitimate interest in certainty and finality. I do not treat proof of actual prejudice as a universal prerequisite to enforcement of contractual time bars. On the circumstances found, I am not satisfied that the Defendant has established that the one-year commencement requirement was fair and reasonable within **section 46**.

[62.] The Claimants also rely on the **Unfair Terms in Consumer Contracts Act**. The same features are relevant to whether the one-year condition, contrary to good faith, creates a significant imbalance to the Claimants’ detriment. The inquiry must consider the contract as a whole and the Defendant’s legitimate interests; **Director General of Fair Trading v First National Bank plc** does not make every disadvantageous standard term unfair. Here, the severity of the contractual time bar, the non-negotiated consumer setting, and the existence of a separate prompt-notice mechanism lead me to conclude that the one-year condition produces such an imbalance.

Conclusion on Preliminary Issue 1

[63.] I therefore answer the two limbs separately. The **one-year commencement condition** cannot be relied upon to defeat an otherwise maintainable claim for personal injury resulting from negligence within **section 40(1)**. If **section 46** applies to its operation, it also fails the alternative reasonableness test on the evidence and for the reasons given. **Section 41(a)** supplies a further prohibition only insofar as the clause is applied to restrict liability for a pleaded breach of contract; I make no finding that every claim advanced in this action is such a claim.

[64.] The **six-month written-notice requirement**, considered as a means of obtaining early information for investigation, was reasonable to include in the contract under the alternative **section 46** assessment. That is not a finding that its contractual time bar

sanction is enforceable against a claim protected by **section 40(1)**, or against contractual liability protected by **section 41(a)**. The statutory validity of applying that sanction, compliance with the requirement of written notice addressed to and received by UTC, and any consequence of non-compliance require distinct conclusions before a failure to give notice can be held to bar this action.

Preliminary Issue 3- Whether the limitation provision, contained in the terms & conditions, applies to the Claimants' Claim?

[65.] Although clause 18 is unenforceable as a one-year bar, Preliminary Issue 3 requires the Court to determine its intended scope. Clause 18 applies to a suit "relating to personal injury, illness or death or loss or damage to property." The phrase "relating to" is broad and directs attention to substance and connection rather than the label attached to the cause of action. The Amended Statement of Claim alleges contractual duties to protect the Claimants from assault, provide a properly trained butler, maintain security and respond appropriately after the incident. It seeks damages for post-traumatic stress disorder, psychological treatment, emotional distress, impact upon work and relationships, and financial loss said to result from the alleged assault.

[66.] Those claims fall within the ordinary contractual words "relating to personal injury or illness." The contractual label does not remove that connection. The prayer also seeks special damages including \$14,658.56 paid for the wedding package. As pleaded, that amount is sought in the same action and by reason of the same alleged breaches and incident. The action therefore remains one relating to personal injury even though it includes contractual and financial relief.

[67.] The Court answers the original contractual component of Preliminary Issue 3 yes as to scope, but no as to dispositive effect: clause 18 was drafted broadly enough to cover the action, but the one-year bar is unenforceable for the reasons given under Preliminary Issue 1.

Preliminary Issue 3B: Section 9 of the Limitation Act

[68.] The parties expressly agreed that Preliminary Issue 3 would include the applicability and effect of **section 9**. That issue is therefore properly before the Court. **Section 5(1) of the Limitation Act** ordinarily prescribes six years for actions founded on simple contract or tort. **Section 5(5)**, however, states that the ordinary six-year provision does not apply to an action to which **section 9** applies.

[69.] **Section 9** applies to an action for damages for negligence, nuisance or breach of duty, expressly including a duty existing by virtue of contract, where the damages consist of or include damages in respect of personal injuries. The Act defines "personal injuries" to include any disease and any impairment of physical or mental condition. An action within **section 9** must be brought within three years from accrual or the later date of the claimant's knowledge.

[70.] The Claimants submit that the surviving action is contractual and therefore governed by the six-year limitation period. That submission is inconsistent with the statutory language. **Section 9** expressly includes a duty arising by contract. The inquiry is not whether counsel has selected contract rather than tort as the pleading label. It is whether damages are claimed for breach of a duty and those damages consist of or include damages in respect of personal injury.

[71.] **Howe v David Brown Tractors** [1991] 4 All ER 30 is persuasive on materially similar English wording. It holds that a contractual breach causing personal injury and consequential financial loss falls within the personal-injury limitation regime. A claimant cannot avoid that regime by abandoning the claim for physical injury while retaining the financial consequences. **Walkin v South Manchester Health Authority** [1995] 1 WLR 1543, [29]–[38] confirms that the nature of the action is a question of substance, not pleading form. The head of loss must be considered in the context of the cause of action to which it relates. **Foster v Zott GmbH & Co** [2000] EWCA Civ J0524-5 further confirms that a contractual claim for accidental personal injury can fall within the special personal-injury period even where the contractual term breached concerns quality or fitness rather than an express duty to exercise reasonable care. Those cases are persuasive rather than controlling, and the English statute contains a discretionary provision absent from the Bahamian Act. Their characterisation analysis nevertheless accords with the text of **section 9 in this jurisdiction**.

[72.] The later decision in **A v Hoare** [2008] UKHL 6, [2008] 1 AC 844 provides further support for the construction adopted here. The House of Lords departed from **Stubbings v Webb** [1993] AC 498 and held that “breach of duty” in **section 11** of the **English Limitation Act 1980** included intentional trespass to the person, including sexual assault. The deliberate nature of the conduct therefore did not, of itself, remove the resulting personal-injury claim from that limitation regime. I regard that construction as persuasive in considering **section 9**. The statutory conclusion in this case rests on the language of **section 9** and the claims as pleaded: the Claimants seek damages for breach of duties, including duties arising by contract, and those damages include damages in respect of personal injury and its financial consequences. The allegation that the injury resulted from an intentional assault does not, by itself, justify applying the ordinary six-year period instead.

[73.] The pleaded contractual duties concern protection from assault, staff training and supervision, security and the resort’s response to the alleged assault. The First Claimant alleges post-traumatic stress disorder, continuing psychotherapy and associated psychological symptoms. Those allegations constitute an alleged impairment of mental condition and therefore personal injury within **section 2** of the Act.

[74.] The action accordingly seeks damages for negligence and breach of duties arising by contract, and those damages include personal-injury damages. **Section 9** applies notwithstanding the inclusion of contract pleadings. **Section 9** applies where damages “consist of or include” personal-injury damages.

[75.] The \$14,658.56 is claimed as special damage in the same action and by reason of the same alleged breaches. No sufficiently distinct cause of action for rescission, total failure of consideration, or calculated diminution in value is pleaded. The Claimants received accommodation and proceeded with the wedding. The prayer for the entire price does not, without a separately pleaded breach and independent loss, create an action outside **section 9**.

[76.] This conclusion does not mean that every contractual financial claim connected with an incident involving injury is governed by **section 9**. A distinct contractual breach causing economic loss, independent of personal injury, may require separate treatment. The present pleading does not establish such a distinct cause of action.

[77.] Both Claimants' claims arise from the same alleged incident and the same pleaded breaches of duty. The Second Claimant's claim is not advanced as a distinct contractual claim for economic loss independent of the alleged personal injury; it forms part of the claim for losses resulting from that incident. For the reasons given above, the limitation conclusion therefore applies to both Claimants, and neither claim survives.

[78.] The alleged assault occurred on or about 15 April 2016. The Claimants immediately knew:

- a. that the alleged incident occurred;
- b. the identity of Mr Adderley;
- c. that he was the butler assigned by the resort;
- d. that the incident was regarded as sufficiently serious to report to management and police; and
- e. the essential facts relied upon to bring an action against the hotel.

[79.] **Section 10** provides that knowledge concerns facts, not knowledge that those facts legally constitute negligence or breach of duty. The Amended Statement of Claim alleges that the First Claimant began treatment in May 2016 and was diagnosed with post-traumatic stress disorder related to the assault. Even if May 2016 is treated as the later date when significant psychiatric injury became known, the three-year period expired no later than May 2019.

[80.] This action was commenced on 14 October 2020. It was therefore outside the period prescribed by **section 9**. The Act contains specific provisions concerning disability, fraud, mistake and deliberate concealment. It does not confer a general discretion equivalent to **section 33** of the **English Limitation Act 1980**. Disability is defined as infancy or unsoundness of mind. No evidence was given, and no argument advanced, that either Claimant was an infant or legally of unsound mind when the cause of action accrued.

[81.] **Section 41** postpones time in cases of fraud, mistake or deliberate concealment. The pleading contains allegations of later concealment and cover-up. But the Claimants knew the alleged assault, assailant, employment role, injury and material facts supporting a claim in 2016. No concealed fact has been identified which prevented them from bringing the action now pleaded. The later allegations therefore do not postpone the commencement of the **section 9** period. I answer the enlarged statutory component of Preliminary Issue 3 in the affirmative. **Section 9** applies, and the action was commenced outside the three-year period. The action is statute-barred.

Preliminary Issue 4 - Whether the exclusive jurisdiction clauses set out in the terms & conditions and the Defendant's On Resort Guest Registration terms & conditions and relied on by the Defendant in its Amended Defence, are reasonable and enforceable.

[82.] Contractual jurisdiction clauses are ordinarily given effect because parties should generally be held to their agreed forum absent strong reasons to the contrary. **Donohue v Armco Inc** [2001] UKHL 64 recognises the strong policy of enforcing an exclusive jurisdiction bargain, while preserving a discretion where justice requires otherwise.

[83.] Although both provisions select The Bahamas as the forum, their scope differs. Clause 17B of the UTC terms and conditions applies to the claims described in that clause where UTC is also a party. The On Resort Guest Registration form provision contains no corresponding qualification: it provides that any and all claims against SRI, the hotel and its affiliates are governed by Bahamian law and that the Bahamian courts are the exclusive venue. Its application therefore does not depend on UTC being joined to the proceedings. I have considered the Claimants' submission that the registration provision was presented at check-in, when refusal to sign would have exposed them to forfeiture of their stay. That circumstance is relevant, but does not, in itself, establish that the provision was unfair. The previously communicated UTC terms had already identified the country in which the hotel was situated as the selected forum for claims within Clause 17B. Although the registration provision is broader in scope, its selection of The Bahamas was consistent with that earlier provision and closely connected to the transaction: the resort, the services and the alleged incident were all situated here. I therefore conclude that the registration provision is reasonable and enforceable in this action, independently of whether the UTC-party qualification in Clause 17B is satisfied.

[84.] The Claimants argue that these clauses may result in a security for costs application against them, which is unfair. The Court concludes that the possibility that foreign claimants may face an application for security for costs does not, by itself, make a Bahamian forum clause unfair. Nor does the clause extinguish a substantive remedy; it identifies the appropriate court. The consumer unfairness framework in **Director General of Fair Trading v First National Bank** requires examination of openness, significant imbalance and legitimate interests. The jurisdiction provision is clear and closely connected to the transaction. It does not create a significant imbalance contrary to good faith. I therefore answer Preliminary Issue 4 in the affirmative as regards the

On Resort Guest Registration form provision, which independently selects Bahamian law and the exclusive jurisdiction of the Bahamian courts. Clause 17B remains subject to its express qualification that UTC is also a party to the claim.

[85.] The preliminary issues are answered as follows:

a. **Preliminary Issue 1:** The one-year commencement condition is unenforceable for the reasons given above. The six-month written-notice requirement is reasonable as an investigatory requirement under the alternative reasonableness assessment. That conclusion does not establish the enforceability of its “no suit” sanction. The dismissal of this action does not rest on non-compliance with the six-month notice requirement.

b. **Preliminary Issue 2:** Delivery through the authorised booking chain was sufficient to communicate the UTC terms and conditions to the Claimants. Whether sufficient notice was given to incorporate the particular one-year commencement condition need not be finally determined: even assuming incorporation, that condition is unenforceable for the reasons given under Preliminary Issue 1.

c. **Preliminary Issue 3A—contractual clause:** Clause 18 was drafted broadly enough to cover an action relating to the alleged assault, PTSD and consequential loss, but its one-year bar is unenforceable and does not dispose of the action.

d. **Preliminary Issue 3B—section 9:** Section 9 applies independently because the action claims damages for breach of contractual duties, and those damages include personal injury damages. The Claimants possessed the requisite knowledge no later than May 2016; the action was commenced after the three-year period expired, and no statutory postponement has been established. The action is statute-barred.

e. **Preliminary Issue 4:** The On Resort Guest Registration provision selecting Bahamian law and the exclusive jurisdiction of the Bahamian courts is reasonable and enforceable. Its application does not depend on UTC being a party to the proceedings. Clause 17B remains subject to its express UTC-party qualification.

Disposition

[86.] Although the contractual one-year commencement condition is unenforceable, the action is statute-barred under **section 9** of the **Limitation Act 1995**.

[87.] The Claimants’ action against the Defendant is therefore dismissed, with costs to the Defendant. No finding is made on the alleged assault or substantive liability.

[88.] The parties shall seek to agree the quantum of costs within 21 days of this judgment. If agreement is not reached, the Defendant shall file and serve a statement of the costs claimed, together with supporting documents, and the parties shall provide submissions

to enable the Court to determine the quantum. Further directions for those filings will be given if necessary.

DARRON D. ELLIS
Justice of the Supreme Court

October 13 2026

