

Who Pays When the Package Breaks? Joint and Several Liability for Tourists' "Chain Losses" in Malaysia

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ABSTRACT

Contemporary tourism is sold as a bundle. A single package assembled by a tour operator or travel agent draws together a flight, ground transfer, accommodation, and destination activities that are, in reality, performed by a chain of independent suppliers. When one link in that chain fails, tourists suffer cascading "chain losses" that routinely exceed the value of the failed component, yet the question of who must compensate them remains legally unsettled in many jurisdictions. This article examines that question in Malaysia, where responsibility is dispersed across the Tourism Industry Act 1992, the Consumer Protection Act 1999, and the Contracts Act 1950 without any explicit standard of joint and several liability for the package as an integrated product. Adopting a qualitative doctrinal and comparative legal method, the study maps the current Malaysian allocation of liability, benchmarks it against the organiser-centred model of the European Union Package Travel Directive 2015/2302 and the regional experience of Indonesia under Law No. 10 of 2009, and evaluates all three against the principles of fairness, legal certainty, and effective consumer protection. The analysis finds that Malaysia's fragmented, contract-by-contract logic leaves the structurally weaker traveller to identify and pursue the specific defaulting supplier, a burden that stalls redress and invites liability-shifting through broad exemption and force-majeure clauses. Malaysia converges with its ASEAN peer, Indonesia, on formal protection that fails to translate into practical redress, whereas the European Union channels accountability to a single organiser and pairs it with mandatory insolvency protection. The article proposes a reform framework centred on a statutory organiser-liability rule, a standardised package-travel contract, mandatory financial security, and an accessible dispute-resolution pathway. It contributes the first doctrinal treatment of joint and several liability for bundled packages in Malaysian and ASEAN tourism law, and offers policymakers an implementation-ready template for modernising the 1992 Act.

Keywords: Tourism Law; Package Travel; Joint and Several Liability; Chain Losses; Consumer Protection

INTRODUCTION

The modern tourist rarely buys a single, discrete service. A typical leisure trip bundles a flight, transfers, accommodation, and activities into one package marketed by a tour operator but delivered by a chain of legally independent suppliers. That bundling is what makes packages attractive, lowering search costs and letting the operator present a seamless experience, but it conceals a fragile legal architecture: each underlying service rests

on a separate contract, performed by a separate provider, and governed by separate sectoral rules. When one component fails, the consequences seldom stay contained.

Consider a disrupted trip. A cancelled flight causes a missed prepaid night, a forfeited excursion, and rebooking costs, cascading harms recent scholarship labels “chain losses” (Tangian et al., 2025). The tourist who bought “one holiday” experiences a single failure, but law that treats the package as separate bilateral contracts forces that tourist to disaggregate the loss, identify the at-fault supplier, and pursue each individually, an often insurmountable barrier for a consumer abroad, unfamiliar with the applicable law, and structurally weaker than the businesses involved.

Legal systems answer this differently. The European Union resolved the question three decades ago and modernised it in the Package Travel Directive (EU) 2015/2302, channelling responsibility for the whole package to a single identifiable “organiser” while allowing Member States to make the retailer concurrently liable (Mulevičienė et al., 2019; Chen, 2021). The traveller need not untangle the supply chain; one accountable party answers for the package and seeks contribution from the defaulting supplier. Malaysia has no equivalent: its tourism-liability framework is dispersed across the Tourism Industry Act 1992 (Act 482), the Consumer Protection Act 1999 (Act 599), and the Contracts Act 1950 (Act 136), and its tour-operating regulations have been criticised as outdated and ill-suited to the contemporary travel trade (Hasan, 2017; Abu Bakar et al., 2024).

Disputes involving travel agents and tour operators have persistently ranked among the most numerous categories before Malaysia's Tribunal for Consumer Claims, with package and Umrah complaints prominent over successive years (Ghapa et al., 2021; Rahman et al., 2018). This reflects a structural mismatch: an industry selling integrated products under a framework that recognises only fragmented obligations. COVID-19 sharpened the problem, exposing how force-majeure clauses and unclear liability allocation left travellers bearing losses a coherent regime would have redistributed (Ghapa et al., 2021).

Against this background, the article asks a deceptively simple question: when a bundled package breaks, who should pay, and under what principle? It argues that Malaysia's contract-by-contract approach is normatively deficient and practically unworkable, and that joint and several liability, operationalised as an organiser-liability rule, offers the most coherent solution. The study maps the existing Malaysian allocation, benchmarks it against the EU's organiser-centred model and Indonesia's regional experience, and synthesises a reform framework tailored to Malaysian institutions.

The article makes three contributions. First, it offers what is, to the authors' knowledge, the first sustained doctrinal treatment of joint and several liability for bundled packages in Malaysian and ASEAN tourism law, connecting a fragmented local literature to the international debate on the “subject of liability” for package tours (Saghoyan, 2024; Sergienko et al., 2025). Second, it answers a specific call: Tangian et al. (2025), studying flight-based packages in Indonesia, invited comparative joint-liability analysis and regulatory-impact assessment. Third, it offers a policy-usable reform template, including a model contract standard and dispute pathway, in response to documented weaknesses in the 1992 Act.

The discussion traces the vulnerability of the package tourist and the competing liability models built to protect them, before showing how Malaysian law falls short. The conceptual and research framework then grounds the study's three normative benchmarks and comparative design, which the methodology translates into a concrete procedure. The comparative reading of Malaysia against the European Union and Indonesia anchors a discussion of what that contrast reveals, feeding into the proposed reform framework. The article closes with the analysis's implications for theory, practice, and policy, and with the limits of a doctrinal study and the research agenda ahead.

LITERATURE REVIEW

The tourist as a structurally vulnerable consumer

A recurring premise in tourism-law scholarship is that the tourist is structurally weaker than the businesses it contracts with: contracting in advance, on non-negotiable terms, for an intangible service it cannot inspect beforehand, often in a foreign jurisdiction whose language and law it does not command (Sergienko et al., 2025; Nelin, 2026). International instruments recognise this asymmetry, and commentators describe travellers as “hypervulnerable,” doubly disadvantaged as tourists and e-commerce users when booking through digital platforms (Mendieta, 2020). This premise justifies protective, non-fault-shifting rules and channelling liability toward the party best able to bear and manage risk.

Liability models for package tours

The comparative literature identifies competing liability models. At one pole is the “fragmented” model, where each provider answers only for its own performance and the traveller must pursue whichever supplier defaulted. At the other is the “organiser” or channelled model, where one accountable party, usually the entity that assembles and sells the package, answers for its entire performance and retains recourse against the supplier at fault. Saghoyan (2024) frames this as identifying the correct “subject of civil liability,” arguing for a clear, predetermined model to end the contradictions of fragmentation.

The European Union has institutionalised the organiser model. Directive 90/314/EEC first established organiser responsibility, and Directive (EU) 2015/2302 modernised it, widening “package” to capture dynamically assembled and online-linked arrangements (Hineva, 2016). The organiser is responsible for the performance of all contracted services, regardless of who performs them, and Member States may make the retailer concurrently responsible (Mulevičienė et al., 2019). The Directive also couples liability with mandatory insolvency protection (Mićović, 2025; Marak, 2023; Borek, 2026), though jurisdiction and applicable-law rules remain misaligned between Brussels Ibis and Rome I (Chen, 2021; Steennot, 2016), and the pandemic tested its refund provisions (Sobolewska, 2023; Borek & Puciato, 2023). The organiser question remains contested beyond the EU as well: in the Russian context, Sergienko et al. (2025) warn against limiting tour-operator liability for the acts of travel agents, arguing this would entrench market dominance and weaken protection, confirming the risk that poorly designed reform can dilute rather than strengthen it.

The Malaysian legal landscape

Malaysian scholarship on tourism liability exists but remains thematically narrow. One strand concerns religious travel: repeated studies find legal protection for Umrah and Muslim-friendly travellers inadequate, note that travel-agent claims have topped the Tribunal caseload for years, and call for clearer, shariah-aligned instruments (Rahman et al., 2018; Ghapa et al., 2021). A second strand critiques force-majeure clauses in package-holiday contracts, arguing that outdated regulations and reliance on the English doctrine of frustration produce unfair outcomes, and proposing good-faith-based reform (Hasan, 2017). More recently, Abu Bakar et al. (2024) analysed the Tourism Industry Act 1992 directly, identifying licensing bureaucracy, non-comprehensive definitions, and disproportionate penalties. What unites these studies is a diagnosis of inadequacy; none offers a doctrine that reconceives the package as a single integrated product for which one party is accountable.

Regional and comparative developments

The regional picture is instructive because it is where the chain-loss problem has been named most sharply. Tangian et al. (2025) show that although Indonesia has sectoral instruments in aviation, tourism, and consumer protection, responsibility allocation across the multi-party package remains fragmented and joint liability is not explicitly regulated, a conclusion mirroring the Malaysian condition. A parallel literature builds tourist-protection claims on Articles 20 and 26 of Law No. 10 of 2009 (Ababil et al., 2023; Chusnida, 2023). Across ASEAN, the diagnosis converges even as the doctrinal solution remains unbuilt.

Research gap

Synthesising the literature reveals converging gaps. Malaysian scholarship has not theorised joint and several liability for bundled packages as a coherent doctrine, and the international debate on organiser-centred models has not been tested against Malaysian law. The Indonesian chain-loss study that most directly frames the problem invites comparative extension, and existing Malaysian work is largely single-jurisdiction and descriptive. This article is designed to close these gaps.

Conceptual And Research Framework

Conceptual Framework

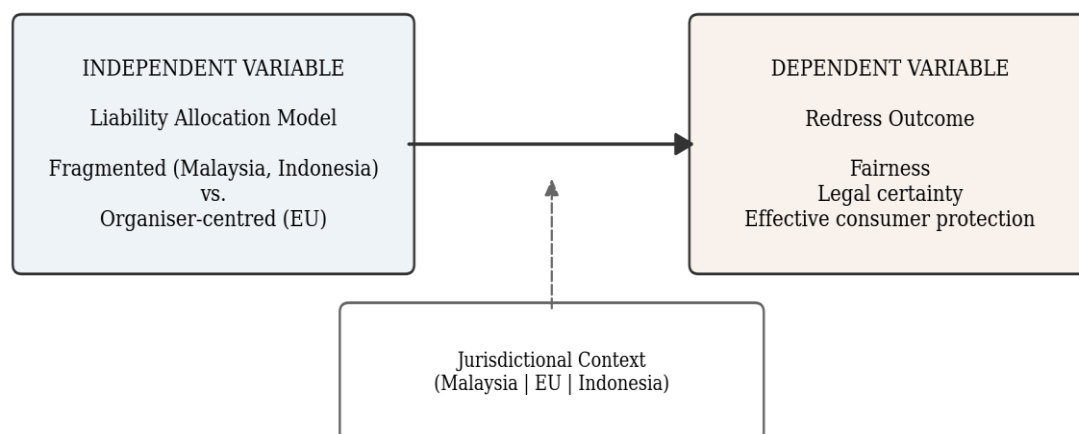
The analysis is organised around three interlocking concepts, evaluated against three normative benchmarks. The first is the tourist as a structurally vulnerable consumer, whose informational, spatial, and bargaining disadvantages justify protective allocation of liability. The second is the package as a single integrated product: because the operator markets and profits from an assembled whole, the unit of legal analysis should be the package rather than its severable components. The third is joint and several liability, through which a traveller may recover the entire loss from one accountable party, who then bears the cost of seeking contribution from the supplier actually at fault. Operationalised as an organiser-liability rule, this relocates the tracing burden from the tourist to the operator.

These concepts are assessed against three normative benchmarks recurring in the comparative literature (Tangian et al., 2025; Nelin, 2026). Fairness asks whether the allocation places risk on the party best able to control and absorb it. Legal certainty asks whether parties can predict, *ex ante*, who is liable for what. Effective consumer protection asks whether the traveller can obtain timely, proportionate redress in practice. The framework thus links a descriptive claim (Malaysia is fragmented) to an evaluative claim (fragmentation fails all three benchmarks) and a prescriptive claim (an organiser-liability rule best satisfies them).

Research Framework

The conceptual constructs are operationalised through a structured three-jurisdiction comparison rather than a single-country description. Malaysia is the focal jurisdiction whose fragmented allocation is mapped first; the European Union's Directive 2015/2302 supplies the mature organiser-liability benchmark, chosen for its maximum-harmonisation logic; and Indonesia, sharing Malaysia's fragmented starting point, serves as the regional comparator where the chain-loss problem has already been articulated (Tangian et al., 2025). Each jurisdiction is read through the same lens: how liability is allocated across the supply chain, who bears the tracing burden, and whether redress is fair, certain, and effective. This shared lens lets the three benchmarks function as a genuine evaluative framework, which the Methodology below translates into a concrete analytical procedure.

Figure 1. Conceptual research framework linking the liability allocation model to redress outcomes



Note: The independent variable (IV) is the liability allocation model, contrasting Malaysia's and Indonesia's fragmented allocation with the EU's organiser-centred channelling. The dependent variable (DV) is the redress outcome, assessed on fairness, legal certainty, and effective consumer protection. Jurisdictional context conditions how strongly the model determines the outcome.

METHODOLOGY

The study employs a qualitative, doctrinal and comparative legal method, the dominant approach in tourism-liability scholarship (Tangian et al., 2025; Saghoyan, 2024; Abu Bakar et al., 2024). Doctrinal research identifies, interprets, and evaluates legal norms and their coherence; comparative doctrinal research extends this by using foreign models as analytical mirrors. The comparative design is deliberately structured. Malaysia is the focal jurisdiction; the EU Directive 2015/2302 serves as the mature benchmark, following a maximum-harmonisation logic that yields transferable principles; Indonesia serves as the regional comparator, sharing Malaysia's fragmented starting point. Comparing these three isolates what fragmentation costs and what channelling delivers.

The materials comprise two tiers. Primary sources include the Tourism Industry Act 1992, the Consumer Protection Act 1999, and the Contracts Act 1950 for Malaysia; Directive (EU) 2015/2302 for the European Union; and Laws No. 10 of 2009 and No. 8 of 1999 for Indonesia. Secondary sources comprise the literature synthesised in Section 2. Analysis proceeds in three moves: mapping the Malaysian allocation, extracting transferable principles from the EU and Indonesian models, and synthesising and evaluating a reform framework against the three benchmarks. Two boundaries should be stated. The study is normative and doctrinal rather than empirical; it does not analyse tribunal decisions, though it flags such analysis as a priority extension. Comparative transplantation is treated cautiously: the EU Directive is a source of principle, not a template to copy wholesale.

Comparative Analysis

Malaysia: fragmented allocation across three statutes

Malaysia lacks a single instrument that defines the package as a legal unit or names one party responsible for its overall performance. Liability must instead be reconstructed from three statutes designed for different purposes. The Tourism Industry Act 1992 principally regulates licensing and conduct, establishing who may operate rather than who bears the loss when a package fails. The Consumer Protection Act 1999 supplies general consumer

rights and the Tribunal for Consumer Claims as an accessible forum, but addresses services generically. The Contracts Act 1950 governs the underlying agreements, but its logic is bilateral, asking what each party promised the other rather than who should answer for an integrated product delivered by many hands.

The practical consequence is a tracing burden on the traveller. When a package fails, the tourist must characterise the failure, identify the responsible supplier, and pursue that supplier under whichever instrument applies, often while abroad. Because no rule channels liability to the operator for the whole package, compensation tends to stall at the value of the failed component, a gap compounded by exemption and force-majeure clauses the outdated 1992 regulations do little to constrain (Hasan, 2017). The result is the paradox Tangian et al. (2025) identified in Indonesia and that applies equally in Malaysia: normative protection formally exists but is ineffective where it matters most.

The European Union: the organiser-liability benchmark

The EU Directive 2015/2302 resolves the same problem through a channelled model: the traveller who buys a package should have one accountable counterpart. The organiser is responsible for the performance of all services in the contract, whether performed by itself or third-party suppliers, and Member States may make the retailer concurrently responsible (Mulevičienė et al., 2019). The traveller claims against the organiser without disaggregating the supply chain, and the organiser retains recourse against the defaulting supplier. Liability is paired with compensation for non-conformity, defined exceptions such as unavoidable and extraordinary circumstances, and mandatory insolvency protection (Mićović, 2025; Marak, 2023).

Two features make the Directive a useful benchmark. Its widened definition of a package captures dynamically assembled and online-linked arrangements, addressing the digital booking patterns fragmenting the Malaysian and Indonesian markets (Hineva, 2016; Chen, 2021), and its maximum-harmonisation character produces a clear, predictable standard. The Directive is not flawless, jurisdictional misalignment persists and the pandemic strained its refund provisions (Sobolewska, 2023; Steennot, 2016), but its core organiser principle is exactly the doctrine absent in Malaysia.

Indonesia: a fragmented regional peer

Indonesia occupies an analytically valuable middle position. Like Malaysia, it has sectoral instruments in tourism, consumer protection, and aviation, and, like Malaysia, lacks an explicit joint-liability standard for packages. Articles 20 and 26 of Law No. 10 of 2009 enumerate tourist rights and entrepreneur obligations (Ababil et al., 2023), yet Tangian et al. (2025) show these provisions do not resolve chain-loss allocation, since integrated contract standards are missing and joint liability is not stipulated. Indonesia confirms that possessing tourist-rights provisions is not the same as a functioning liability channel.

Comparative synthesis

Table 1 synthesises the three jurisdictions across the dimensions most relevant to chain-loss allocation. The pattern is stark: the two ASEAN systems share a fragmented, supplier-by-supplier logic that leaves the traveller to trace fault, whereas the EU channels liability to an accountable organiser and pairs it with insolvency protection. Malaysia and Indonesia differ from the EU not in the existence of tourist-protection norms but in the presence of a channelling mechanism.

Table 1. Comparative allocation of package-travel liability

Dimension	Malaysia	Indonesia	EU (PTD 2015/2302)
Unit of legal analysis	Severable bilateral contracts	Severable bilateral contracts	The package as one product
Party accountable to the tourist	Each supplier for its own act	Each supplier for its own act	The organiser for the whole package

Joint / several liability	Not explicitly provided	Not explicitly provided	Channelled to organiser; retailer optional
Who bears the tracing burden	The tourist	The tourist	The organiser (with recourse)
Chain-loss recovery	Stalls at failed component	Stalls at failed component	Full package loss recoverable
Insolvency protection	Limited / licensing-based	Limited	Mandatory guarantee or insurance
Governing instruments	Act 482; Act 599; Act 136	Law 10/2009; Law 8/1999	Directive (EU) 2015/2302

Note: Synthesised by the authors from the sources discussed in Section 5.

DISCUSSION

The comparative analysis supports three linked propositions. First, Malaysia's fragmentation is a normative failure against the study's own benchmarks. On fairness, the framework places the tracing burden on the tourist rather than the operator who selected the suppliers and profits from the assembled product. On legal certainty, parties cannot predict *ex ante* who will answer for a failure, since the answer depends on which component failed and which of three statutes is invoked. On effective consumer protection, the volume of travel-agent claims before the Tribunal indicates formal rights are not translating into timely redress (Ghapa et al., 2021). Second, the organiser model is not a foreign curiosity but a targeted response to exactly this failure. Its logic is distributive rather than punitive: defences such as unavoidable and extraordinary circumstances remain, but the ordinary burden of tracing and pursuing suppliers shifts to the party best positioned to bear it. Sergienko et al. (2025) caution that reform must strengthen, not dilute, the channel; a poorly designed rule letting operators disclaim responsibility for their agents would reproduce the gap under a new name. The question is not whether to channel liability but how to channel it robustly. Third, ASEAN convergence matters for feasibility. Because Indonesia shares Malaysia's starting point and has already surfaced the chain-loss problem, a Malaysian reform framework is regionally legible and potentially exportable, a template for a common ASEAN challenge. The EU Directive should be mined for principle rather than transplanted wholesale: Malaysia's federal structure, licensing tradition, and religious-travel segment require local adaptation, for example in how insolvency protection is structured for Umrah operators.

A Proposed Reform Framework For Malaysia

Drawing the analysis together, the article proposes a reform framework built on four pillars, implementable through targeted amendment of the Tourism Industry Act 1992 and coordination with the Consumer Protection Act 1999 rather than wholesale recodification. The pillars are calibrated for proportionality, since an undifferentiated compliance burden could raise exit costs for Malaysia's many small and medium operators; the financial-security pillar below is accordingly tiered rather than flat.

A statutory organiser-liability rule. The Act should define a “package” as an integrated product and designate the organiser as responsible to the traveller for the performance of all included services, whether delivered by the organiser or third parties, with a statutory right of recourse against the defaulting supplier. Following EU precedent, the retailer may optionally be made concurrently liable where it is the traveller's point of contact.

A standardised package-travel contract. A prescribed minimum standard should stipulate the parties, bundled services, risk allocation, a chain-loss compensation mechanism, permissible and impermissible force-majeure clauses, and clear cancellation and refund terms, directly addressing the liability shifting the current outdated regulations permit (Hasan, 2017).

Mandatory financial security. Operators should hold insolvency protection, through guarantee or insurance, sufficient to fund refunds and repatriation, tiered by booking volume so small and medium operators face a

proportionate cost, with a design sensitive to the religious-travel segment given the documented Umrah-claim burden (Ghapa et al., 2021; Mićović, 2025).

An accessible dispute-resolution pathway. The Tribunal for Consumer Claims should be expressly empowered to adjudicate package chain-loss claims against the organiser, supported by a duty on operators to disclose the supply chain, so that travellers are not defeated by evidential asymmetry.

Table 2 maps each pillar to the deficiency it cures and the benchmark it advances, providing a compact implementation logic for policymakers.

Table 2. Reform pillars, deficiencies addressed, and benchmarks advanced

Reform pillar	Current deficiency addressed	Benchmark advanced
Organiser-liability rule	Traveller must trace and pursue the defaulting supplier	Fairness; legal certainty
Standardised contract	Liability-shifting via broad exemption and force-majeure clauses	Legal certainty; consumer protection
Mandatory financial security	Losses on operator insolvency, esp. Umrah	Consumer protection; fairness
Accessible dispute pathway	Evidential asymmetry defeats redress	Consumer protection

Note: Developed by the authors.

Implications

The article introduces joint and several liability for bundled packages as a coherent doctrinal lens in Malaysian and ASEAN tourism law, reframing the package from severable contracts into a single integrated product for which one party is accountable, and extending the vulnerability-based justification for protective allocation into multi-supplier chain losses. Practically, for industry, the standardised contract and organiser rule offer clarity benefiting reputable operators as much as travellers, levelling competition against operators that currently compete partly by disclaiming risk; trade bodies such as MATTA could adopt the model contract as a self-regulatory baseline ahead of statutory reform. For travellers, a single accountable counterpart and an empowered tribunal pathway convert formal rights into practical redress. For policymakers, the framework supplies an implementation-ready template for modernising the Tourism Industry Act 1992, responding directly to the weaknesses documented by Abu Bakar et al. (2024) and Hasan (2017), and offers a defensible middle path between inaction and wholesale transplantation that could anchor a broader ASEAN conversation on package-travel protection.

CONCLUSION, LIMITATIONS, AND FUTURE RESEARCH

This article asked who should pay when a bundled tour package breaks, and under what principle. Malaysia's contract-by-contract framework fails the tests of fairness, legal certainty, and effective consumer protection by forcing the structurally weaker traveller to trace and pursue the defaulting supplier while chain losses go uncompensated. Benchmarked against the EU Directive and Indonesia's regional experience, the decisive difference is not the existence of tourist-protection norms but the presence of a channelling mechanism, and the study proposes a four-pillar reform framework centred on a statutory organiser-liability rule.

The study has limitations that also define its future research agenda. First, it is doctrinal and normative rather than empirical; a content analysis of Tribunal and court decisions would evidence how chain-loss claims are actually resolved, answering the empirical call of Tangian et al. (2025). Second, the comparative frame is confined to the EU and Indonesia; extending it to other channelled regimes and Umrah-specific arrangements would refine the model. Third, a regulatory-impact assessment estimating compliance costs for small operators would strengthen the policy case and move the agenda from diagnosis to evidence-based reform.

Ethical Considerations

This study is doctrinal and normative. It analyses statutory texts, reported tribunal and judicial materials, and published secondary literature that are already in the public domain, and it did not collect data from, or intervene with, any human participant or animal subject. Ethical approval was therefore not required.

Conflict Of Interest

The authors declare no conflict of interest.

Data Availability Statement

This is a doctrinal and comparative legal study; no new empirical dataset was generated or analysed during this research. All primary legal instruments (statutes, regulations, and directives) and secondary sources discussed are publicly available through the sources identified in the reference list.

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