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Airline Liability for Passenger Injury, Death and Delay

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Outline

- The Purpose of Airline Liability Conventions
- Outline of Conventions
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- Limits of Liability
- Death & Bodily Injury
- Delays
- Exclusivity of Applicable Regime
- Choice of Forum
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- Defenses
- Restrictions on the Contract of Carriage
- Limitation of Actions
- Insurance

The Purpose of Airline Liability Conventions

- International Uniformity – a single regime applies for all flights of a carrier and for all passengers affected
- Establish a common standard for compensation

Outline of Conventions

Warsaw Convention 1929

Hague Protocol 1955

Guadalajara Convention 1961

Guatemala City Protocol 1971

Montreal Protocols 1971

Montreal Convention 1999

Applicability

- Based on the contract of carriage
- Based on the origin and destination agreed upon
- Based on the the kind of travel

Limits of Liability

- Death & Bodily Injury (covered by Article 17)
 - Warsaw Approach: liability under the first tier but liability does not exceed first tier unless:
 - Willful misconduct
 - Deficient documentation
 - And avoidance of liability altogether if carrier had taken all reasonable measures
 - Montreal Approach: strict liability under the first tier and reverse burden of proof under the second tier
 - Periodic revision of monetary limits
 - Currently, for Article 17 claims, first tier set at 113,100.00 SDRs (from 100,000.00 SDRs)
- WC: Constant pressures for increase of liability limits
- WC: Obsolete monetary conversion standard

Death & Bodily Injury

Article 17

Scope of application: embarkation, disembarkation + on board the aircraft

- Delineation of embarkation and disembarkation can be unclear: focus on control over passenger, restrictions on passenger's movement freedom in the terminal as well as proximity to/from the aircraft

1. Death or bodily injury

- No recovery for emotional distress
- The case of PTSD

2. Caused by

- Sufficient causality even if multiple events with causal link at play
- Sufficient if accident occurs onboard but death happens outside the aircraft

3. An Accident

- Includes omissions: failure to assist a passenger, failure to divert the aircraft
- Inter-passenger injuries: one passenger assaults another, one passenger spills hot coffee onto another, one passenger hits another passenger with a carry-on

Delay

Article 19

- Definition of Delay – how late is delayed ?
- Events causing the delay long before flight occurrence may place claim outside scope of Article 19
- Cases of cancellation and denied boarding:
 - Does Article 19 apply at all?
 - The notion of complete non-carriage
 - The steps that must be taken by a carrier to increase the chances of Article 19 applicability
- Not all damages are recoverable
- Liability limit currently set at 4,694.00SDRs – equivalent of willful misconduct ceiling breaker still available

Exclusivity of Applicable Regime

If the claim falls within the scope of the Convention, then reliance on domestic law is not available for the pursuit of a claim

Three views on exclusivity:

- If the Convention applies in general, then no recourse to domestic law at all
- If the claim falls within the substantive and temporal scope of Articles 17 to 19, then no recourse to domestic law
- If the claim does not fall within the substantive scope of Articles 17 to 19, then recourse to domestic law possible

→ Importance of claim characterization

Choice of Forum

Where can a claim be pursued?

- Domicile of carrier
- Principal place of business of carrier
- Carrier's place of business through which contract was made
- Destination of passenger based on agreed itinerary
- Fifth jurisdiction under Montreal Convention: principal and permanent residence of passenger + carrier operates directly or indirectly BUT for Article 17 claims only
- Forum non conveniens – restrictions on a forum's availability if a more suitable forum is available (primarily for U.S. litigation)

Liability Apportionment in Cases of Codesharing

- Difference between the contracting/
marketing carrier and the operating carrier →
WC “successive carriage” unable to capture
this situation
- Liability apportionment addressed under the
Guadalajara Convention and the Montreal
Convention

Defenses

- Contributory negligence – including the first tier
- All reasonable measures defense for Article 19 claims – availability restricted under Montreal Convention

Restrictions on the Contract of Carriage

- Montreal Convention acknowledges general principle of freedom to contract

But

- Provisions restricting or diminishing the rights granted under the Convention are void

Limitation of Actions

- Two year threshold
- Consequence of delay → extinguishment of cause of action

Insurance

- Compulsory Insurance requirement of Montreal Convention – required policy amount = amount necessary to meet obligations under the Convention
- National (and European Union) regulations setting minimum requirements – all jurisdictions set requirements for death & bodily injury, and some also set requirements for cargo and baggage

Thank You

Questions ?