AIR LAW, REGULATION AND COMPLIANCE MANAGEMENT

COURSE DESIGNED FOR
ISTANBUL TECHNICAL UNIVERSITY AND THE TURKISH AVIATION ACADEMY
BY MCGILL UNIVERSITY INSTITUTE OF AIR AND SPACE LAW

AIRLINE LIABILITY FOR
PASSENGER INJURY,
DEATH AND DELAY

Prof. Ludwig Weber, McGill University
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INTRODUCTION

The Warsaw System

a. Warsaw Convention 1929
c. Guadelajara Convention 1961
d. Guatemala City Protocol 1971
e. Montreal Protocols 1971

h. Montreal Convention 1999
Warsaw System

- Comprehensive and exclusive legal regime governing liability of air carrier in case of accident towards passengers and cargo shippers.

- What is an accident: an “unexpected or unusual event or happening that is external to the passenger” (Air France v. Saks, U.S. Supr. Ct., 1985).

- Recoverable injury: When passenger suffers death, bodily injury or physical manifestation of injury. Left open whether mental anguish accompanied by physical injury is recoverable.
Warsaw System

- Presumption of fault of carrier, as *quid pro quo* for numerical cap on the carrier’s liability
- Scope of application - Arts. 1 and 2
- Transportation Documents - Passenger ticket – Art. 3 / Baggage check – Art. 4
Warsaw System

- Liability of the Carrier: In case of Passenger injury or death – Art 17
- Period of transportation includes embarkation / disembarkation
- Notion of bodily injury vs. mental injury (shock, trauma, PTSD) – case law
- Notion of accident – case law
- Damages to be awarded – compensatory, but no punitive damages
Warsaw System

- Damage for delay – Art. 19 - Notion of delay
  - case law

- All necessary measures – Art. 20

- Contributory negligence – Art 21

- Limits of liability – Art. 22: Quid pro quo for presumed fault regime
  - 125,000 Poincaré gold francs; gold franc unit
  - Effects of inflation: in 1966, approx. 8,300 USD
  - Hague Protocol: 250K gold francs,
  - Montreal Agreement 1966: 75,000 USD
Warsaw System

- Limits inapplicable in case of:
  - wilful misconduct
  - non-delivery of adequate documents, Arts. 3(2), 4(4), 9
  - non-Convention carriage: Arts. 1 (domestic), 18 (surface)

- Contrary provisions null and void – Art. 23
- Wilful misconduct – Art. 25: breaking the limit
Warsaw System

- WARSAW CONVENTION SYSTEM ON AIR CARRIER LIABILITY (1929) OUTDATED BY 1970s
- LIABILITY LIMIT ERODED BY INFLATION
- TWO ATTEMPTS TO UPDATE (1971 AND 1975) BY AMENDING PROTOCOLS UNSUCCESSFUL
- IN 1999, MONTREAL CONVENTION ADOPTED TO MODERNIZE WARSAW SYSTEM
- TWO-TIER LIABILITY REGIME INTRODUCED
Modernization of Warsaw System: Montreal Convention 1999

- **TWO-TIER LIABILITY OF THE AIR CARRIER, WITH THRESHOLD (100,000 SDR) FOR FIRST TIER - STRICT LIABILITY**

- SDR: BASKET OF U.S. DOLLAR, EURO, JAPANESE YEN AND POUND STERLING

- SDR HAS AN APPROXIMATE VALUE OF $1.4076 USD

- NO NUMERICAL LIMIT IN SECOND TIER
Modernization of Warsaw System:
Montreal Convention 1999

- Fault Liability, with Reversal of Burden of Proof in Second Tier
- Mandatory Insurance Clause
- Advance Payment for Victims Compensation
- Other Innovative Features, e.g. Escalator Clause and Periodic Review of Limits
Montreal Convention 1999

- Passenger death or injury (also damage to baggage) – Art 17: Two-tier system – Accident
- Full compensation in case of death or injury of passengers – Art 21 Limits of liability – Art. 22 Compensation
- Adequate insurance requirement – Art. 50 Periodic Review of limits – Art. 24
- Advance payments – Art. 28
MONTREAL CONVENTION 1999

- STATUS OF RATIFICATION:

- As of 15/01/2016, 119 States Parties

- Turkey has ratified with effect from 26 March 2011

- Most of the destinations of TK have ratified

- U.S. and the EU and its 28 Member States have also ratified

- Australia, Brazil, China, India, Japan, Nigeria, South Korea, Saudi Arabia, South Africa, the UAE and other major aviation States have likewise ratified

- As per declaration of China, Convention applies to Macau SAR and Hong Kong SAR
MONTREAL CONVENTION 1999

End of Part I
Questions ?