

Air Travel Accidents

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Montreal Convention

- Previous international conventions on Air Travel were Warsaw (1929) and the Hague (1955)
- Consolidated & updated by the Montreal Convention (1999), came into force 2003.
- Convention has effect in English law by the Carriage by Air Acts Order 2002, coming into force 2004.

Applicability of the Convention

- *International carriage of persons baggage or cargo for reward.*
- International carriage
- any carriage – which according to the agreement (ticket) has departure and destination 2 ‘state parties’
- If a stopover in another county, qualifies even if start and finish in same state
- Flight from London to Channel islands or even Gibraltar not ‘international carriage.’ **BUT**

Applicability of the Convention

- The Carriage by Air Acts (Application of Provisions) Order 2004 applies to domestic air travel in rather the same fashion as the Montréal Convention.
- ***Laroche v Spirit of Adventure*** [2008]
- the hot air balloon in this case had both taken off and ‘landed’ (if that is the right word) in the rolling countryside of Kent.
- Issued outside 2 years

- if this was a case of carriage by air, it was governed by the then Carriage by Air Act (Application of Provisions) Order 1967.
- Schedule 1 to the 1967 Order effectively replicates the provisions of the Warsaw Convention in respect of non-international flights.
- The judge concluded that the same principles of construction and interpretation should apply to the non-international rules as applied to the Warsaw Convention itself.
- Accordingly, following the judgment of the House of Lords in Sidhu v British Airways (1997) AC 430, if the non-international rules did govern the claim, and they afforded no remedy, then no remedy was available at all.

Aircraft

- Includes
- Planes, gliders, airships, helicopters, hovercraft, balloons (but not a paraglider – *Disley v Levine 2001*)

Reward

- Usually payment but constructed widely (*Corner v Clayton 1976*)

Reward

- But also
- *Gratuitous carriage.....performed by an air transport undertaking.'*
- SO may include passengers travelling free and employees

Liability for Death/Injury Under the Convention

- Article 17
- The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Liability for Death/Injury Under the Convention

- The convention imposes a form of strict liability in return for limitations on liability
- First essential is to establish there was an accident
- That the 'accident' must cause death/injury means that the 'accident' cannot be the injury itself.
- There must be, '*an unexpected unusual event...that is external to the passenger.*' Saks v Air France (1985)

Liability for Death/Injury Under the Convention

- Morris v KLM (2002 HL)
- Case concerned a male passenger who indecently assaulted young girl in next seat
- Held – this was an accident – no reason to limit test to a link to operation of the aircraft
- SO, could also apply to air rage, terrorism

Liability for Death/Injury Under the Convention

- Judges tend to look at each link in the chain of the accident and ask whether – in respect of each link – whether the link is an unexpected or unusual event

Liability for Death/Injury Under the Convention

- **Williams v Air UK (1997)**
- A passenger who slipped on something shiny on the cabin floor, fell, banged her knee
- NOT a qualifying accident
- **Cannon v My Travel (2005)**
- Nor a lady slipping on a marble ramp at Cardiff airport made treacherous by rain.

Liability for Death/Injury Under the Convention

- **Barclay v BA (2008)**
- B slipped on a floor strip in cabin
- Fell and injured
- Strip not defective
- Held – Laws LJ – *Article 17 contemplates...a distinct event not being part of the usualoperation of the aircraft which happened independently of anything done... by the passenger.*

Liability for Death/Injury Under the Convention

- ***Examples of accidents***
- Crash (akehurst v Britannia Airways – Gerona crash)
- Defective seat causing passenger with back condition to sit at awkward angle – Malaysian Airline Systems v Krum (2005)
- Spilling hot food/drink
- Airline food poisoning
- Items fall from overhead compartments

Liability for Death/Injury Under the Convention

- **Accident NOT qualifying**
- DVT
- Allergic reaction to insecticide spray
- Seat belt injury from normal process of deceleration

Liability for Death/Injury Under the Convention

- What is death or bodily injury?
- NOT Psychiatric injury – **Morris v KLM**
- May be able to claim if it is linked/part of a physical injury – *‘A psychiatric injury may often be evidence of a bodily injury or the description of s condition which included bodily injury.’* Lord Hobhouse

Liability for Death/Injury Under the Convention

- **Location of the Accident**
- Must be
- On board, or,
- In the course of any of the operations of embarking or disembarking

Liability for Death/Injury Under the Convention

- **Phillips v Air New Zealand (2002)**
- P was at Fiji airport
- P asked for help, wheelchair and helper (T) provided
- After check in T pushed D (in wheelchair) onto moving escalator – chair fell back & P injured.
- P missed limitation so needed to show convention DID NOT apply

Phillips v Air New Zealand (2002)

- Here
- A particular flight had been called
- P was in the course of the necessary process of embarkation because the airline had called passengers to the gate
- So the process includes, check in, going thru security, making way to the Gate. For some of the time at an airport you can do what you want but these are processes the airline effectively makes you do to embark – Morison J

Phillips v Air New Zealand (2002)

- *'Accordingly I am satisfied that Dr Phillips was injured in an accident which occurred in the course of one of the processes of embarkation.'*

Damages for Death or Injury

- Article 21
- 1. For damages arising under paragraph 1 of Article 17 not exceeding 100000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.
- 2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100000 Special Drawing Rights if the carrier proves that:
 - (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
 - (b) such damage was solely due to the negligence or other wrongful act or omission of a third party

Damages for Death or Injury

- If Article 17 conditions met, liability up to 100.000 SDR follows
- As at 19 June 100,000 SDC = £97,745.15

Damages for Death or Injury

- If want to claim more than SDR limit, it is a fault regime – BUT burden on the Airline to show NOT at fault.
- Damages will be calculated by the law of the place where the action being heard.

Limitation

- Article 35 of the Convention
- 2 years
- From date flight should arrive at destination
- Absolute limit – After, claim extinguished
- No latitude for minors or those with disability
- S33 Limitation Act wont apply
- Time expires midnight on the 2nd anniversary, but if court closed that day, issue next day

Amendment after Limitation

- **Hall v Heart of England Balloons (2010)**
- H injured in hot air balloon crash
- Balloon operated by Mr Gabb
- 1 yr after crash G incorporated as a company
- H's sol issued v the limited company
- D said H should have issued v Mr Gabb as company didn't exist at time of accident
- H made app to amend – Failed, lost

Exclusivity of the Convention

- Cannot bring a claim unless specifically provided for under the convention
- Article 26
- **Sidhu v BA (1997)**
- 1990 Saudi royal family in Kuwait en route when Iraqi army took over airport
- In transit, in course of *international carriage*
- So – Convention engaged
- BUT - No '*Accident*' as defined by convention
- Claim for psych injuries only.

Sidhu v BA (1997)

- Action was brought under common law for negligence for allowing aircraft to land when knew of conflict
- Issued outside 2 year limit
- C said, where there is a wrong, should be a remedy
- If not covered by Convention the residual remedies of common law may be used

Sidhu v BA (1997)

- (nb this was a case under Warsaw Convention but position applies as under Montreal)
- Lord Hope – *The domestic courts are not free to provide a remedy according to their own law, because to do so would be to undermine the Convention.*

Exclusivity of the Convention

- Therefore, Cant claim for;
- Noisy passengers – *Gonszor v ITC 2008*
- Defamation – row with cabin crew – *McCauley v Aer Lingus (2011)*
- Disability Discrim – *Hook v BA (2012)*
- Sexual Discrim – *Potgieter v BA (2005)*

THANK YOU

- Michael is a Partner with Watkins & Gunn Solicitors based at their Cardiff office. He is a Fellow of APIL , Wales Co-ordinator and a former National EC member. He contributes the chapter on Sports Law injuries to the publication 'APIL Personal Injury Law Practice and Precedents.' Michael is a member of the Law Society PI Panel. He is recognised as a leader in the field in claimant PI (See 'Chambers UK' 2016). He is the principle solicitor acting for the Trade Union, Community, in Wales and the West Country. Michael heads the Public Law Dept at Watkins and Gunn and has undertaken a number of high profile t judicial review challenges mainly in respect of service closures and downgrades such as hospital, schools and libraries. He has been involved in a number of legal challenges testing the devolved settlement in Wales. Michael is a former president of the Cardiff & District Law Society, a member of the Law Society Civil Justice Committee, a Vice Chair of the Legal Aid Agency Special Controls review Panel. He is a longstanding school governor, a trustee of several charities and Newport County supporter.

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