

THE MALAYSIAN CARRIAGE OF GOODS BY AIR ACT 1974 (CAA 1974): THE LEGAL FRAMEWORK AND LIABILITY OF CARRIER

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ABSTRACT

Carriage of goods by air in Malaysia is governed by four international conventions. They are the 1929 Warsaw Convention as revised at The Hague in 1955, the Guadalajara Convention 1961, the Warsaw–Hague Convention further amended by Montreal Protocol No.4 and the Montreal Convention 1999. They are identified as the Warsaw System Conventions and the Montreal based Convention.

Each convention has its pros and cons. The main focus of this article is to highlight carrier liability for cargo carriage. Areas that will be scrutinized are the scope of application of the conventions, the liability of carriers and limitation of these liability. This is followed by criticism, recommendations and comments on possible lacuna that arise, where possible.

Keywords: Carriage of Goods by Air Act 1974 (CAA 1974), Warsaw Convention, Montreal Convention, carrier liability, cargo

INTRODUCTION

Four air conventions will be discussed by virtue of the Malaysian Carriage by Air Act 1974 (CAA 1974). [1] Only cargo liabilities and not passenger liabilities will be discussed.

The four conventions are:

- (a) the 1929 Warsaw Convention, as revised at The Hague in 1955 (Warsaw–Hague Convention) [2], which is given legal effect by the First Schedule of the 1974 Malaysian Carriage by Air Act (the "CAA 1974");
- (b) the Guadalajara Convention 1961, [3] which is given the force of law by virtue of the Second Schedule to the CAA 1974 (the Supplementary Convention);
- (c) the Warsaw–Hague Convention further amended by Montreal Protocol No. 4, [4] which is given force of law by virtue of the Fifth Schedule to the CAA 1974 (the Amended Convention) and
- (d) the Montreal Convention 1999, [5] which is given the force of law by virtue of the Sixth Schedule to the CAA 1974 (the Montreal Convention).

Laws of Malaysia Act 148, Carriage by Air Act 1974 (CAA 1974) is the Act that gives effect to the conventions above for carriage of goods by air and to provide for all matters connected to air transportation. Malaysia has ratified four conventions in relation to the international carriage of passengers, baggage and cargo by air which can be found in Carriage by Air Act 1974. The four conventions (whose core conventions are the Warsaw and Montreal Convention) are Schedule 1, 2, 5 and 6 of the Malaysian Carriage by Air Act 1974 (the "CAA 1974").

THE WARSAW CONVENTION AS AMENDED AT THE HAGUE 1955 CONVENTION (FIRST SCHEDULE TO THE MALAYSIAN CARRIAGE BY AIR ACT 1974, "THE CAA 1974")

In 1955, The Hague enacted a protocol amending the 1929 Warsaw Convention. [6] However, the carrier's liability limitation is not changed for cargo. Legal costs are not included from the

claimant's damages amount, it introduced settlements to settle the dispute out of court and information in the document of carriage [7] is simplified. [8]

Scope of Application

This agreement is applicable exclusively to international flights. [9] Under the Conventions of the Warsaw System and the Montreal Convention of 1999, the term international flight is referred to [10] as "place of departure, place of destination and any agreed stopping places". [11] Based on the air waybill, it is evident that there is a contract between the cargo owner and the carrier. However, should a carrier decide to change or alter its stopping places, this will not affect the agreed stopping places. [12]

The definition of 'international carriage' [13] is following the agreement of two parties for the place of "departure and destination" is in "two territories of High Contracting Parties or within the territory of a single High Contracting Party or within the territory of another non-High Contracting Party state". [14] It applies even when there is a break in the journey.

However, carriage between two points within the territory of a High Contracting Party without a stopping place in the territory of another state does not fall within the ambit of an 'international carriage' category for this convention. [15] In short it means that "all the international air convention applies only when carriage between two Contracting States of the same international convention or if a carriage is within a single contracting state if an international stopover is agreed upon".

Where a contract of carriage that does not come under an 'international carriage' definition, liability will depend on the condition of carriage stipulated by the carrier which may include the Warsaw Convention's "monetary cap" in limiting liability of goods "lost, damaged or delayed".

It is to be noted that where the carriage does not fall within any international air law convention, the carrier may select any international air convention he wishes to follow, not forgetting he is open to national law of the state he is in. As much as positivity is in this move, it also creates uncertainty for the carrier. The Montreal Convention 1999 is a much comprehensive convention to follow.

Carriage that performs a few “successive” [16] air carriers, is taken as one journey or known as “undivided carriage” even though it’s carried out in multiple air waybills. [17] Therefore, a part of an international carriage carried in the same state will come under the purview of “international air convention”. [18] As such, the liability convention for “successive carrier” is not the same as the liability convention given to “actual carrier” which is under an agreement. [19] This section is read together with Article 30(1) in that the successive carriers are subjected to the rules in this convention and are the contracting party to the contract of carriage so long as it is performed under his contract. In connection to cargo, the consignor will have a cause of action against the first carrier. [20] A carrier can be taken to task by a consignor for any “destruction, loss, damage or delay” that happened whilst he was performing the carriage. A carrier is “jointly and severally liable” [21] to consignor or consignee. [22] This is a positive move and gives diversity to the carrier.

Liability of Carrier

Damage or delay to cargo is when the carrier is liable. [23] In cases of damage, the claimant has to complain in writing to the carrier in fourteen days after receiving the cargo. For delay cases, a complaint must be made within twenty-one days from the date on which the cargo [24]has been made for delivery.[25] the time frame is set as such for the carrier to investigate for gathering information. If the claimant did not complain during the stipulated period would mean the condition of the goods delivered were good as in the carriage document. In the absence of this compliance, the claimant will have problem raising a case with the carrier. [26]

A case can be brought to the court or arbitration proceedings by the claimant against the carrier. [27] He has a duration of two years from the time the goods arrive at destination [28]or as to when the cargo was perceived to have arrived or from the date the carriage ceased. On occasion where there is more than one date, the latest in date shall apply.[29] If the claimant does not file within those two years, the carrier's liability in this regard is waived. If these three conditions of written complaint, two year action period and evidence of loss is fulfilled, the carrier is liable as the goods were under his care during the carriage.

The amount of liability of a carrier for “delay, loss or damage” to cargo is capped at “17 Special Drawing Rights per kilogram” [30] if the parties have not made other declaration whilst the cargo was surrendered. [31]

It is submitted that international air conventions have “presumed liability” criteria for carrier for any cargo damage or loss. [32] It is strict liability where the claimant need not prove the carrier is at fault. Even if damage was sustained during carriage but [33] the consequential damage took place later, the [34] carrier is still liable. [35]

Liability of the carrier largely depend on whether the goods were under the care of the carrier [36]and that he was in control of it. The air waybill or cargo receipt will determine when the carrier came into contact with the cargo. [37] This period ends as the goods are delivered to consignee. [38] International air conventions [39] stipulate “carriage by air” doesn’t include “any carriage by land, sea, or by river performed outside an airport.” [40]There is a rebuttable presumption that if any damage happened during the carriage by air where other modes of transportation was involved and performed ‘outside an airport’. Other modes of transportation involved here could be for “loading, delivery or transhipment” of cargo. Where there is no evidence of where the damage took place, the carrier is under no obligation to prove where the damage took place and it is assumed that it took place during air carriage. [41] In the event there is evidence that damage took place outside the airport (not occasioned by air [42]

The rebuttable presumption discussed above is a question of fact. It’s from a case to case basis. Where a combined carriage is ‘conducted in part by air and in part by another mode of transport, this convention applies only to the air carriage,’ [43] The parties to a combined carriage agreement may include provisions for additional means of transport as long as the provisions of the international air convention governing air carriage [44] are observed. The parties to this contract may incorporate international air conventions into their air waybills for combined air/surface transport.[45] If the goods are delayed due to damage or loss, then the cargo owner [46]need not show that it was the carrier fault.[47] It is worth noting that the monetary limits on liability for delay is identical to the rules that apply to cargo loss or damage.

Liability other than the Carrier

The liability of the carrier extends to that of his servants and agents. The carrier is generally liable. However, the issue is whether the servants or agents can be directly liable to the claimant. [48] They can be liable in tort but normally they are protected by the courts as they are not parties to the contract. [49] Otherwise, if an action is brought against the servant or agent of the carrier, [50] he is entitled to avail himself of the limitations to liability so long as he is able to prove "he acted within the scope of his employment".

Servants and agents have different interpretation depending on the jurisdiction of each country. [51] It is based on national law of the jurisdiction. 'Servants' refers to the people who have made an employment contract with carrier. Agents are "independent contractors" who carry out a specified job for a specified period. The servants and agents must "act within the scope of their employment". [52] There is some confusion in this area. An action of strike by the servant or an agent is construed by the courts to be outside the scope of employment, [53] while an action of stealing goods is construed as being within the scope [54] of employment. If the carrier's servants and agents are sued jointly, the "total amount recoverable" [55] against the carrier, his servants, and agents is "17 SDR per kilogram or the amount of any specific declaration of value upon delivery." This liability is limited to this amount.

Limitation of Liability of 'Successive' Carrier [56]

An "undivided carriage" is one performed by a few "successive" [57] carriers. This should be agreed by the parties from the beginning. Additionally, because one or more operation is carried out within the same state, it holds its international status. They will be jointly and severally accountable to the consignor or consignee when it comes to responsibility. [58] Should one carrier is sued then he is entitled recourse against other successive carriers, limiting his liability. [59]

THE GUADALAJARA CONVENTION 1961

The 1961 Guadalajara Convention [60] is alternately referred to as "Supplementary Convention" to the Warsaw Convention, for the Unification of Certain Rules Relating to

International Carriage by Air Performed by a person other than the Contracting Carrier.” It was signed in Guadalajara, on 18 September 1961.

In 1961, in view of the large increase in charter and other flights. This opened doors to the possibility of other entities being an actor in the picture where the actual carrier may not be the contracting carrier. This made the extension of the application of the rules of the convention to persons, their servants and agents who perform the carriage [61] but are not the contracting carriers. [62]

Scope of Application

Contracting carriers act as principal contractors. [63] They make agreement for carriage with consignor for air conventions. The whole or part of the carriage is performed by an “actual carrier” of which the contract was agreed upon by the contracting carrier and the consignor. [64] The actual carrier is given authority the contracting carrier. [65] There is difference between an “actual carrier” and a “successive carrier.” [66] When a transportation service is provided by two or more providers and “regarded by the parties as a single operation” then it is taken as successive carriage.

Liability of Carrier

In accordance with this practice, the performance of “whole or part of the carriage” is carried out by the “actual carrier” then the “contracting carriers” are liable. The difference between these two are, “actual carrier” is responsible for his part of performance while the “contracting carrier” is responsible for the whole journey. For cases of cargo damage during the journey, both the “actual carrier” and “contracting party” are liable, jointly or severally. [67]

Where only one carrier is sued, he is entitled to ask the other carrier to join the proceedings. [68] On the other hand, the contracting carrier cannot refuse to bear liability on the grounds that the damage happened during the leg of carrying performed by the “actual carrier”. [69] The "actual and contracting carriers" agree on their respective rights and obligations, which include recourse and indemnification. [70]

Limitation of Liability

This convention provides limitation to liability both for “contracting and actual carriers”, as well as to their servants and agents in the course of their job. The claimant's damages against the "actual and contracting carriers," as well as their servants and agents, cannot exceed the maximum amount recoverable from either “actual or contracting carrier.” [71]

Both "actual and contracting carriers" are jointly and severally accountable for their actions and omissions [72]as well as of their servants or agents with regards to the portion of the carriage carried out by the actual carrier itself. The “actual carrier” is not liable for the “contractual carrier” “willful misconduct or recklessness” and will not lose any rights regarding the monetary restriction of liability. [73]

Similarly, if the "contractual carrier" assumes an obligation in excess of the 17 SDR per kilogram limit for cargo for which the consignor has made a specific declaration of value upon delivery, the obligation is not binding on the "actual carrier" unless he consents. Thus, an “actual carrier” obligation for the carriage of cargo will be limited to 17 SDR per kilogram unless otherwise agreed or unless he, his servants, or agents commit an act of misconduct. [74]

THE WARSAW–HAGUE CONVENTION IS FURTHER AMENDED BY MONTREAL PROTOCOL NO. 4, 1975 (MAP 4 1975), WHICH IS GIVEN FORCE OF LAW BY VIRTUE OF THE FIFTH SCHEDULE TO THE CAA 1974 (THE AMENDED CONVENTION)

Montreal Additional Protocol Number 4, 1975 (herein after referred to as MAP 4, 1975) [75]
The Warsaw-Hague Convention 1955 was amended further where the most important changes were made to the liability of the carriage of cargo. Ratification of MAP 4 1975 results in compliance with the Warsaw-Hague Convention of 1955, as amended by MAP 4, 1975.[76]

Changes included in MAP 4 1975 are;

1. For the carriage of cargo, the carrier's financial liability is unbreakable. [77]

2. The carrier's financial liability for cargo remains unchanged, but the monetary unit of 250 gold francs per kilogram has been substituted by 17 SDR per kilogram. [78]
3. Four defences has been introduced for the carriage of cargo. [79]
4. Electronic air waybill is introduced. [80]
5. Particulars to be provided in the transportation paperwork (air waybill) has been simplified while the fine for non-compliance of documentary requirements has been removed. [81] For the purposes of this section, the research will only encompass the changes mentioned above, as all else of MAP 4, 1975 has been covered by the Warsaw-Hague Convention 1955.

Scope of Application

Air waybill:

All the international air convention has requirements to delivery and descriptions on air waybills. The Warsaw Hague and MAP 4 Convention 1975 introduced electronic waybill as compared to the paper air waybill where the air waybill has to be delivered where there is cargo to be delivered. [82]

Where there is more than one package, the carrier may ask the consignor to prepare separate air waybill. [83] The air waybill will be made in three original parts, the first to be signed by the consignor and marked for the carrier. [84] The second part will be marked for the consignee, signed by the consignor and carrier [85] and the third part, signed by the carrier and handed to the consignor after the goods are accepted by the carrier for carriage. [86]

Electronic air waybill:

The best changes of the Warsaw-Hague – MAP 4 Convention 1975 is where parties can use simplified electronic record and not the paper air waybill in their shipment procedure. The carrier must provide a cargo receipt for the purpose of identifying the shipment, as well as access to electronic information.[87]

Although not included in the 1999 Montreal Convention, the 1975 Warsaw-Hague-MAP 4 Convention established two clauses regarding the use of electronic bills: the consignor must

consent to the carrier substituting an electronic record for the paper air waybill, and the carrier cannot refuse to accept the cargo if the transit or destination points are not equipped to accept electronic air waybills. [88]

With regards to list of the information that must be included on the air waybill or cargo receipt. The Warsaw Convention 1929 contains seventeen particulars that must be listed, [89] namely from (a) to (q). Failure to include these particulars or a carrier acceptance of cargo without an air waybill will result in the carrier losing his right of limitation to liability. [90] It is submitted that this is harsh.

The Warsaw Hague Convention 1955 then lists three particulars a waybill must contain. [91] Article 8(c) specifies that the carrier's liability is limited in monetary terms. The 1975 Warsaw-Hague-MAP 4 Convention honed the list of particulars [92] even further. Article 9(a) and (b) is similar to the Warsaw-Hague Convention 1955. Article 9(c) is calculation for the monetary limitation. The Warsaw-Hague-MAP4 Convention 1975 states that absence from any or all of the particulars will not deprive the carrier from the financial liability limitation. It is noted that this move is a positive change as opposed to the position before the earlier regimes. The earlier particulars have been simplified and electronic air waybill to simplify shipments is adopted and any non-compliance of the particulars on the air waybill on the carrier's part is removed.

Limitation of Liability

There are 4 defences for the carriage of cargo. For claims relating to cargo loss or damage, the Warsaw-Hague-MAP 4 1975, the carrier adds [93] 4 defences.[94] Article 18(3)(a) and (b) all carry defences that could be interpreted differently in different jurisdictions. [95] Because the defences also appear in other regimes, it has been interpreted uniformly. It is to be noted that one such area is that packing is defective, and goods cannot withstand the situation [96] on a normal transit. [97] The other two defences, Article 18 (c) and (d) apply during armed conflict where enforcement of customs, excise, trade, embargo apply.

Another critical aspect of the Warsaw-Hague-MAP 4 Convention is that the air carrier must prove that the destruction, loss, or damage to cargo was caused 'exclusively' by one or more of the four defences. [98] The word "solely" means that the threshold of proving is difficult. In

the case of *Winchester Fruit Ltd v. American Airlines Inc*, the court held that the proper way to approach this would be to read in whole and not singularly. The judge found that the carrier's defence that the items' inherent vice was the 'principal source of degradation' was adequate. [99]

The 1929 Warsaw Convention allows for the round-number translation of 250 gold francs into any national currency. [100]The 1955 Warsaw Hague Convention specifies that in the case of judicial proceedings, 250 gold francs shall be converted into national currencies other than gold at their gold value on the date of the judgement. [101]Countries created legislation to reflect this, but even after many years and inflation, this sum has not been changed, creating confusion in international trade. As a result, a large number of countries accepted the SDR as the appropriate unit.

International air accords limit the carrier's liability to 250 gold francs or 17 SDR per kilogram [102] unless the consignor made a particular statement of the package's value and paid any additional amounts required. If a specific declaration of value [103] is made, the carrier's obligation is limited to the declared sum, unless the carrier establishes that the consignor declared a value greater than the package's actual value at delivery. The carrier's terms of contract frequently require the consignor to acknowledge that he had the option of making a special declaration of the value of the goods at delivery, referring to the special declaration as an entry on the air waybill for a "declared value for carriage." [104]

THE MONTREAL CONVENTION 1999, (WHICH HAS THE EFFECT OF LAW AS A RESULT OF THE CAA 1974'S SIXTH SCHEDULE) [KNOWN AS THE MONTREAL CONVENTION]

On 8 November 2003, the Montreal Convention entered into force. It established a structure that radically altered the international air carrier's obligation. The convention applies to all international carriage of passengers, baggage, and cargo. [105] It was adopted to 'modernise' the rules and to end the confusion caused by multiplicity of instruments, [106] especially the Warsaw Convention System. It was necessary for ICAO to modernise the system, only to those

areas where there were shortcomings in the Warsaw System. While the Montreal Convention was unanimously ratified, the numerous additions, supplements, and private agreements further fractured the system, as these rules were not universally ratified as the original Warsaw Convention. [107] For the purposes of this research, only air cargo transportation will be examined.

Scope of Application

This convention governs the carriage of cargo by international carriage. [108] Carriage between two contracting parties in two state parties is characterised as international carriage. International carriage is defined as transport between two points within the territory of a single state party without a halt in the territory of another state (Article 1(2)). Carriage by many carriers is regarded as a single undivided carriage (Article 1(3)). This convention is applicable solely to carriage by state or public authorities; [109] it is not applicable to postal service. [110]

Documentary issues

Under Article 4 Montreal Convention, the carrier can decide not to use a conventional air waybill and instead use other means of preserving a record of carriage. [111] Under Article 5(2) Warsaw Convention, the consignor had to consent to this situation, but consent is no longer required under the Montreal Convention. It remains the consignor's responsibility to draw up the air waybill.

Article 5(2) and Article 9 Montreal Convention state that non-compliance with documentary requirements of the air waybill does not adversely affect the validity of the contract of carriage. [112] However, unlike Article 9 Montreal Convention, liability limits will continue to apply if there is non-compliance. [113] Article 10 Montreal Convention reproduces the responsibility provisions in Article 10 Warsaw Convention regarding the particulars of the cargo documentation. Both the consignor and carrier are fully liable for all damage suffered as a result of irregularities in the particulars or statements of the air waybill. [114]

Liability of Carrier

Where the carrier loses the goods or fails to deliver it within seven days [115] of the scheduled arrival date, the consignee has the right to sue the carrier for rights derived from the carriage

contract. [116]In the event that checked baggage is damaged, destroyed, or lost, or if checked baggage is damaged, the carrier is liable for this loss but if the baggage had inherent defect [117]and the carrier is not liable for the damage caused by the damage. [118]A carrier may stipulate that the contract of carriage be subject to higher limits of liability [119] than those provided for by this convention or to no limits of liability. [120]

Limitation of Liability

According to Article 18(1) of the Montreal Convention, the carrier is liable for damage caused by the destruction, loss, or damage to cargo on the condition that the event causing the damage occurred during air carriage, but the carrier is not liable if and to the extent that the carrier establishes that the destruction, loss, or damage to the cargo resulted from four areas. [121]

While the air carrier is presumed to be liable for cargo loss, damage, and delay, the air carrier may use a number of carefully defined defences to absolve itself. [122]The carrier bears the duty of adducing the requisite evidence to establish the defences. [123]

The following defences will be discussed in greater depth below:

- (a) Justification for "all necessary steps" [124]
- (b) Defending "careless pilotage"; [125]and
- (c) Defending of "contributory negligent" [126] on the part of the claimant.

The defences for 'all necessary measures' in Article 18(1) is that it provides that the carrier is not liable if it proves that all "reasonable measures" were taken. However, in order to meet this test the carrier will probably be obliged to prove the cause of the loss or damage.

Article 18 (2) of the Montreal Convention provides the carrier is not liable if he proves the damage was caused by negligence in pilotage or navigation and that in all other respects all necessary measures were taken to avoid the damage. This defence is similar to "error in navigation" in maritime law. It is, however, rarely invoked.

Any subsequent improper act by the carrier does not automatically result in liability for the carrier but might be apportioned proportionately between the parties. When the carrier establishes that the damage was caused by one of the causes listed in Article 18 paragraph 2 of the Montreal Convention, the carrier has made a significant step forward. The claimant must

then prove that the carrier is liable [127] for another concurrent reason. The court may then decide to equally distribute blame amongst the parties. [128]

Courts have found that airlines behaved reasonably in delay situations caused by increased security measures, mechanical failures, and weather disruptions. Airlines were found not to be liable for delay caused by security measures,[129] not liable for delay costs due to maintenance issues [130] and airlines not liable for delay costs due to weather.[131]

In addition, if any damage was caused or contributed by negligence or wrongful acts or omission on the part of the claimant, the carrier shall be entirely or partially immune from liability solely to the amount of the damage. [132] It further clarified and strengthened the word 'exoneration'. As stated in the last sentence of Article 20, it applies to all the liability provision of this Convention which means its applicable to cargo liability. [133]

For carriage of cargo, the liability for destruction, loss, damage or delay is 17 SDR per kilogram at the time the package was handed to the carrier. However, if the claimant makes a special declaration of interest, the carrier's liability for delivery shall be limited to the amount [134] specified by the claimant. [135] The weight of cargo is only to the total weight of the package. When the carrier's obligation for the destruction, loss, damage, or delay of a portion of the cargo impacts the value of other packages on the same waybill or receipt, the carrier's liability is limited to the whole weight of such package. [136]

For successive carriage of goods, all parties are bound by the carriage contract to the extent that the contract governs the portion of the carriage executed [137] under their supervision. [138] For baggage and freight, the consignor may sue the first carrier [139] who executed the conveyance, whereas the consignor entitled to delivery may sue the last carrier. Additionally, in the event of destruction, loss, damage, or delay, each party may take action against the carrier that executed the shipment. The carriers will be jointly and severally [140] liable to the consignor or consignee. [141] When a portion of the transportation is conducted by air and the remainder by another mode of transport, the duty [142] is limited to the component of the transportation conducted by air. [143]

Liability for cargo strict and unbreakable

Under the Warsaw Convention,[144] the air carrier's cargo liability limit is 250 francs Poincare per kilogramme. This liability limit does not apply if a special declaration of interest at destination has been made or if recklessness or willful misconduct can be shown. Warsaw Convention [145] does not provide for the defence of recklessness or willful misconduct. The liability limits under Warsaw Convention are unbreakable.

The carrier's cargo liability scheme has become strict because the 'all necessary measures' defence of the Warsaw Convention [146]is no longer available under Montreal Convention. On the other hand, the applicable liability limits have become unbreakable [147]as Article 25 Warsaw Convention and Article 22(5) Montreal Convention does not apply to cargo liability. [148]

Comparing this to Article 18(2) Montreal Convention, the carrier can rely on the defences in Article 20(3) Warsaw Convention if there is an inherent defect, [149] quality or vice, defective packing for which the carrier is not responsible, an act of war or armed conflict and an act of a public authority in connection with the entry, exit or transit of cargo. While Article 20(3) Warsaw Convention requires the carrier to prove that damage is solely due to one of these causes, the word 'solely' has been omitted from Article 18(2) Montreal Convention, lowering the threshold for proving causation. [150]

Concurrent Claims

Additionally, there is greater confusion stored in concurrent claim foundation. Montreal Convention Article 29 (Article 24 of the Warsaw Convention) [151] establishes two-tiered framework. Concurrent claims based on the assertions of another (national) foundation are allowed under the first interpretation, however, the convention limits these claims through its restrictions and liability restrictions.

Second, the convention precludes national claims from being combined with claims made under convention. Nevertheless, the first idea is widely backed in the literature, [152] it appears that the second vision is more frequently followed [153] in English and American case law.

It is contended that the vision used has no bearing on the outcome of a lawsuit for as long as a contemporaneous claim made in accordance with the Warsaw or Montreal Conventions exists.

The consequence of a concurring claim being blocked is identical to prohibitionist in nature. Under both circumstances, the carrier's liability is limited by the scope and limitations set by the Convention's provisions. The Montreal Convention's Article 29 should be read similarly in accordance with Article 24 of the Warsaw Convention in this regard. As a result, they appear to be identical in nature on a fundamental level.

CONCLUSION

For the Warsaw Convention as revised by the Hague 1955 Convention (First Schedule to the Malaysian Carriage by Air Act 1974 (the "CAA 1974"), all international air agreements, including this one, provide for the carrier's 'presumed obligation' for all loss or damage incurred during the air carriage. [154] It is strict liability, which means that the claimant is not required to establish that the carrier is at fault. Even if the event that resulted in the harm occurred during the carriage but [155] the resultant damage occurred later, the [156] carrier remains accountable. [157]

The carrier's responsibility is largely determined by whether or not items were in the carrier's 'charge.' [158] To protect the products, the transporter must maintain control over them. When the carrier comes into contact with the shipment, the air waybill or cargo receipt will indicate. This period must expire upon delivery of the goods to the consignee. [159] Under the 1961 Guadalajara Convention, carriers, both actual and contracted, are accountable when actual carrier performs in entirety or a portion of the carrying. The actual carrier is responsible for the portion of the carriage in which he conducts, the contractual carrier, on the other hand, is responsible for the complete contract's transport. Where cargo is damaged because of actual carrier's performance, the party claiming can sue both the actual and also the contracting parties jointly or severally.

The Warsaw–Hague Convention is further amended by Montreal Protocol No. 4 (1975), which is given force of law by virtue of the Fifth Schedule to the CAA 1974 (the Amended Convention). Art 9(a) and (b) of this regime is similar to the Warsaw-Hague Convention 1955. Art 9(c) is calculation for the monetary limitation. The Warsaw-Hague-MAP4 Convention 1975 states that absence from any or all of the particulars will not deprive the carrier from the

financial liability limitation. This move is a positive change as opposed to the position before the earlier regimes. The earlier particulars have been simplified and electronic air waybill to simplify shipments is adopted and any non-compliance of the particulars on the air waybill on the carrier's part is removed.

Under the Montreal Convention 1999, which is given the force of law by virtue of the Sixth Schedule to the CAA 1974 (the Montreal Convention), if the carrier mishandles the cargo or if the cargo does not arrive within seven days of the scheduled arrival date, the consignee has the right to sue the carrier for the rights arising from the carriage contract. [160] The carrier is responsible for any damage, breakage, missing or damage to checked baggage but if the baggage had inherent defect and the damage is caused by that damage then the carrier is not liable. [161] The author is of the opinion that there are too many conventions governing the Malaysian legal framework for air transport. Instead of simplifying, it is more confusing and almost incomprehensible.

ENDNOTES

1. <https://www.caam.gov.my/wp-content/uploads/2021/02/6.-Carriage-by-Air-Act-1974-1.pdf> accessed on 5/1/2022.
2. <https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf> accessed on 5/1/2022.
3. https://unctad.org/system/files/official-document/sdtetlb20061_en.pdf accessed on 5/1/2022.
4. https://unctad.org/system/files/official-document/sdtetlb20061_en.pdf accessed on 5/1/2022.
5. https://unctad.org/system/files/official-document/sdtetlb20061_en.pdf accessed on 5/1/2022.6.
6. Article 22 (1)-(3) Warsaw Convention 1929.
7. Forrest, R. M. (1961). Carriage by Air: The Hague Protocol. *International & Comparative Law Quarterly*, 10(4), 726-738.

8. <https://transportrecht.org/wp-content/uploads/WA-HagueProtocol1955.pdf> accessed on 20/3/2020.
9. <https://www.caam.gov.my/wp-content/uploads/2021/02/6.-Carriage-by-Air-Act-1974-1.pdf> accessed on 20/3/2020.
10. Article 1 Warsaw-system conventions and Montreal Convention 1999.
11. Yue, H. (2013). Ma Meilan v. Thai Airways International Public Company Limited. *Air and Space Law*, 38(2).
12. *Grein v. Imperial Airways Ltd*, [1937] 1 KB 50, CA. See Shawcross, *Air Law*, para. 348.
13. Art 1(2), (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
14. Burleson, T., Keough, J., Plenge, C. F., & Lazara, J. H. (1969). Current Legislation and Decisions. *Journal of Air Law and Commerce*, 35(2), 249.
15. Srivastava, A. (2020). Carriage of Goods by Air. In *Modern Law of International Trade* (pp. 259-266). Springer, Singapore.
16. Art 1(3), (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
17. Abeyratne, R. (2018). Liability Issues Under Treaty Law. In *Law and Regulation of Air Cargo* (pp. 203-215). Springer, Cham.
18. Cousins, J. (1976). Warsaw Convention--Air Carrier Liability for Passenger Injuries Sustained within a Terminal. *Fordham L. Rev.*, 45, 369.
19. Kang-Bin, L. (2003). The Comparision of Carrier’s Liability Regime for Air Cargo under Warsaw Convention and Montreal Convention. *문화산업연구*, 3(1), 319-334.
20. Reiber, P. (1956). Ratification of the Hague Protocol; Its Relation to the Uniform International Air Carrier Liability Law Achieved by the Warsaw Convention. *J. Air L. & Com.*, 23, 272.
21. Beaumont, K. M. (1955). WARSAW CONVENTION OF 1929, AS AMENDED BY THE PROTOCOL SIGNED AT THE HAGUE, ON SEPTEMBER 28, 1955, THE. *The Journal of Air Law and Commerce*, 22, 414.
22. Art 30(3) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
23. Article 18 (First Schedule, Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
24. Mankiewicz, R. H. (1956). Hague Protocol to Amend the Warsaw Convention. *The American Journal of Comparative Law*, 5(1), 78-97.
25. Article 26(2) (First Schedule, Malaysian Carriage by Air Act 1974 (the “CAA 1974”)

26. *Western Digital Corporation and ors. v. British Airways Plc.* [2001] Q.B. 733 (C.A.)
27. Article 29(First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”))
28. FOLLOWS, H. A. A. (1944). CONVENTION for the Unification of Certain Rules for International Carriage by Air.
29. *All Transport v. Seaboard World Air Lines*, 349 NYS 2d 277 (1988).
30. Weigand, T. A. (2000). The Modernization of the Warsaw Convention and the New Liability Scheme for Claims Arising Out of International Flight. *Massachusetts Law Review*, 86.
31. Article 22(2) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”)).
32. Article 18(1) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”)).
33. Shawcross, *Air Law*, para. 589
34. *Nowell v. Qantas Airways Ltd* 22 Avi 18, 071 (WD Wash, 1990).
35. Article 18(2) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”)).
36. Article 18(4) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”)).
37. Abeyratne, R. (2018). Liability Issues Under Treaty Law. In *Law and Regulation of Air Cargo* (pp. 203-215). Springer, Cham.
38. *Société National Air France v. Société Arlab* (Aix-en-Provence CA, 29 November 1983), (1985) 39 RFDA 478.
39. Berlingieri, F. (2003). A New Convention on the Carriage of Goods by Sea: Port-to-Port or Door-to-Door. *Unif. L. Rev. ns*, 8, 265.
40. Article 18(5) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”)).
41. PROTOCOL, H. Case Law Digest.
42. Diederiks-Verschoor, I. P. (2001). The liability for delay in air transport. *Air and Space Law*, 26(6).

43. Article 31(1) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
44. Article 31(2) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
45. *Siemens Ltd v. Schenker International (Australia) Pty Ltd & Another*, [2004] HCA 11, a case decided by Australia's supreme court.
46. Sassoon, D. M. (1971). Liability for the international carriage of goods by sea, land and air: some comparisons. *J. Mar. L. & Com.*, 3, 759.
47. Article 19 (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
48. Whalen, T. J. (2000). The New Warsaw Convention: The Montreal Convention. *Air and space law*, 25(1).
49. Gazdik, J. G. (1961). The Conflicts and State Obligations under the Warsaw Convention, the Hague Protocol and the Guadalajara Convention. *J. Air L. & Com.*, 28, 373.
50. Article 25A(1)
51. Erel, E. (1963). The Hague Protocol: An Abuse of Executive Discretion. *UCLA L. Rev.*, 11, 358.
52. Schoner, D. (1981). Art. 25 Hague Protocol—Theft of bank notes: German Federal Supreme Court (Bundesgerichtshof), decision of 16 February 1979. *Air and Space Law*, 6(2).
53. *OLG Stuttgart*, 24.02.93, TranspR 1995, 74.
54. See *Rustenburg Platinum Mines Ltd. v. South African Airways and Pan American World Airways Inc.* [1977] 1 Lloyd's Rep. 564 at 576.
55. Article 25 (2)(a) Hague Protocol.
56. Article 30 Hague Protocol.
57. Mankiewicz, R. H. (1969). Air Transport Liability—Present and Future Trends. *J. World Trade L.*, 3, 32.
58. Chan, L. S. (2000). Claims Arising from Air Carriage. *Singapore Academy of Law Journal*, 12(2), 331-344.
59. Tompkins, G. N. (2010). *Liability rules applicable to international air transportation as developed by the courts in the United States: From Warsaw 1929 to Montreal 1999* (Vol. 7). Kluwer Law International BV.

60. <https://www.mcgill.ca/iasl/files/iasl/guadalajara1961.pdf> accessed on 22/1/2020
61. FOLLOWS, H. A. A.
62. ICAO Doc.
63. Whalen, T. J. (2000). The New Warsaw Convention: The Montreal Convention. *Air and space law*, 25(1).
64. Conti, C. (2001). Code-sharing and air carrier liability. *Air and Space Law*, 26(1).
65. Sundberg, J. W. (1975). Guadalajara Convention Live from Cyprus, The. *Air L.*, 1, 83.
66. Chan, L. S. (2000). Claims Arising from Air Carriage. *Singapore Academy of Law Journal*, 12(2), 331-344.
67. Carpanelli, E. (2015). Cooperative Ventures between Air Carriers: Time to Reform the International Rules. *Issues Aviation L. & Pol'y*, 15, 307.
68. Article VII Guadalajara Convention 1961.
69. Fujita, T. (2008). The comprehensive coverage of the new convention: performing parties and the multimodal implications. *Tex. Int'l LJ*, 44, 349.
70. Article X Guadalajara Convention 1961.
71. Harakas, A. J. (1992). The Montreal Protocols and the Proposed Supplemental Compensation Plan Enabling Legislation. *J. Int'l L. & Prac.*, 1, 49.
72. Article III Guadalajara Convention 1961.
73. Teo, J. C. C. (2003). Breaking Convention: When Is a Carrier's Limit of Liability under the Warsaw Convention Broken?: Beyond Beryl Claire Clarke & Ors V Silkair (Singapore) PTE LTD. *Singapore Academy of Law Journal*, 15(1), 1-29.
74. See *Ericsson v. KLM*
75. Montreal Protocol No. 4 amending the Warsaw Convention for the Unification of Certain Rules Relating to International Air Carriage, signed at Warsaw on 12 October 1929, as amended by the Hague Protocol of 28 September 1955, signed at Montreal on 25 September 1975.
76. Article XV, Article XVII (2) and Article XIX (2) MAP 4 (Montreal Protocol No. 4) 1975.
77. Sheinfeld, D. I. (1979). From Warsaw to Tenerife: A Chronological Analysis of the Liability Limitations Imposed Pursuant to the Warsaw Convention. *J. Air L. & Com.*, 45, 653.

78. Hastings, W. K. (1996). Living with an Archaic Treaty: Solving the Problem of the Warsaw Convention's Gold Clause. *Victoria U. Wellington L. Rev.*, 26, 143.
79. Diederiks-Verschoor, I. P. (2001). The liability for delay in air transport. *Air and Space Law*, 26(6).
80. Milde, M. (1975). Legal work in ICAO. *Air and Space Law*, 1(2).
81. Fitzgerald, G. F. (1976). The Four Montreal Protocols to Amend the Warsaw Convention Regime Governing International Carriage by Air. *J. Air L. & Com.*, 42, 273.
82. Article 5 (1) Warsaw-Hague-MAP 4 Convention 1975 and Art. 4 (1) Montreal Convention 1999.
83. Article 7(2) MAP 1975.
84. The 1929 Warsaw Convention and the 1955 Warsaw-Hague Convention stipulate that both the carrier's and consignor's signatures may be printed or stamped. The 1975 Warsaw-Hague-MAP 4 Convention and the 1999 Montreal Convention both provide for the printing or stamping of the carrier's and consignor's signatures.
85. Both the 1929 Warsaw Convention and the 1955 Warsaw-Hague Convention have an additional clause saying that the second section of the air waybill "shall accompany the goods." This was specifically prohibited under the 1975 Warsaw-Hague-MAP 4 Convention and the 1999 Montreal Convention.
86. Article 6 (3) of the Warsaw Convention 1929 states that "upon acceptance of the commodities," and the Warsaw-Hague Convention 1955 adjusts this to say "prior to the loading" of the cargo onto the aircraft.
- The 1975 Warsaw-Hague-MAP 4 Convention and the 1999 Montreal Convention remove reference to when the carrier signs, as the carrier's signature is intended to acknowledge receipt of the cargo, which occurs when the carrier hands the consignor the third part of the air waybill.
87. 1975 Warsaw-Hague-MAP 4 Convention Article 5 (2)
88. Fitzgerald, G. F. (1976). The Four Montreal Protocols to Amend the Warsaw Convention Regime Governing International Carriage by Air. *J. Air L. & Com.*, 42, 273.
89. Article 8 Warsaw Convention 1929.

90. Article 9 Warsaw Convention 1929.
91. Article 8 Warsaw-Hague Convention 1955.
92. The 1955 Warsaw-Hague Convention, Article 9. For an intriguing case addressing the fundamental issue of what the notice requirement under Article 8(c) entails, see *Fujitsu Computer Products Corporation v. Bax Global Inc.* [2005].
93. Abeyratne, R. I. (1997). Regulatory management of the Warsaw System of air carrier liability. *Journal of Air Transport Management*, 3(1), 37-45.
94. Article 18 (3) Warsaw-Hague-MAP 4 Convention 1975.
95. Koning, I. (2008). Liability in air carriage. Carriage of cargo under the Warsaw and Montreal Conventions. *Air and Space Law*, 33(4/5).
96. Tompkins, G. N. (2010). *Liability rules applicable to international air transportation as developed by the courts in the United States: From Warsaw 1929 to Montreal 1999* (Vol. 7). Kluwer Law International BV.
97. Clarke & Yates, Land and Air. Take notice that under English law, packing is considered to be part of the cargo.
98. Cheng, B. (2004). A new era in the law of international carriage by air: from Warsaw (1929) to Montreal (1999). *International & Comparative Law Quarterly*, 53(4), 833-859.
99. See *Winchester Fruit Ltd v. American Airlines Inc.*, [2002] 2 Lloyd's Rep. 265 (276).
100. Article 22(4) Warsaw Convention 1929.
101. Article 22 (5) of the 1955 Warsaw-Hague Convention.
102. Article 22 (2) (b) Warsaw-Hague-MAP 4 Convention 1975,
103. In Article 22 (2) Warsaw-Hague Convention 1955, Art. 22 (2) (b) Warsaw-Hague-MAP 4 Convention 1975, and Article 22 (3) Montreal Convention 1999, the phrase "special declaration of value" is substituted by the phrase "special declaration of interest." The phrasing distinction is semantic. The term "special declaration of value" will be used throughout this study.
104. Shawcross, *Air Law*, para 604.
105. Article 3 Carriage by Air Act 1974 (Act 148).

106. Thalin, C. (2002). The air carrier's liability for passenger damages – Article 17 of the Warsaw System and the new Montreal Convention. *Air Law/Spring 2002*. 1-61.
107. Ingrid Koning, (2008), "Liability in Air Carriage, Carriage of Cargo Under the Warsaw and Montreal Conventions", Kluwer Law International.
108. Article 1(1) Montreal Convention.
109. Article 2(1) Montreal Convention.
110. Article 2(3) Montreal Convention.
111. De Leon, P. M., & Eyskens, W. (2000). The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System. *J. Air L. & Com.*, 66, 1155.
112. González, J. R. (2004). The survival of the Warsaw system and the new Montreal convention governing certain rules for international carriage by air: are the conflicts solved?.
113. Cheng, B. (2000). 1999 Montreal Convention on International Carriage by Air Concluded on the Seventieth Anniversary of the 1929 Warsaw Convention (Part I), *The/Das Montrealer Ubereinkommen von 1999 uber die Beforderung im Internationalen Luftverkehr/La Convention de Montreal de 1999 Relative au Transport Aerien International*. *ZLW*, 49, 287.
114. Larsen, P. B., Sweeney, J. C., & Gillick, J. E. (2012). Appendix 1: 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air. In *Aviation Law: Cases, Laws and Related Sources* (pp. 1331-1350). Brill Nijhoff.
115. Field, A. (2006). International air carriage, the Montreal Convention and the injuries for which there is no compensation. *Canterbury L. Rev.*, 12, 237.
116. Article 13 Montreal Convention 1999.
117. De Leon, P. M., & Eyskens, W. (2000). The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System. *J. Air L. & Com.*, 66, 1155.
118. Article 17(2) Montreal Convention 1999.
119. Balfour, J., & van der Wijngaart, T. (2016). Montreal convention: To whom is the carrier liable in the event of delay. *Air & Space L.*, 41, 511.
120. Article 25 Montreal Convention 1999.
121. Article 18(2) Montreal Convention 1999.

122. Koning, I. (2008). Liability in air carriage. Carriage of cargo under the Warsaw and Montreal Conventions. *Air and Space Law*, 33(4/5).
123. Goldhirsch, L. (2000). *The Warsaw Convention annotated: a legal handbook*. Kluwer Law International BV.
124. McKay, J. (2002). The Refinement of the Warsaw System: Why the 1999 Montreal Convention Represents the Best Hope for Uniformity. *Case W. Res. J. Int'l L.*, 34, 73.
125. Alhoudail, M. A. (2005). Air carrier liability: unfinished unification of private international air law.
126. Southcott, R. F., & Strickland, C. Y. (2001). Canadian Maritime Law Update: 2000. *J. Mar. L. & Com.*, 32, 399.
127. Smith, M. (2015). In the Wake of the Montreal Convention: Why Maritime Law Should Abolish Limited Liability for Personal Injury and Death Claims. *Austl. & NZ Mar. LJ*, 29, 36.
128. Dempsey and Milde call this the 'comparative fault theory', see P.S. Dempsey and M. Milde, *International Air Carrier Liability: The Montreal Convention of 1999*, (Montreal, Centre for Research in Air & Space Law McGill University 2005), p. 167.
129. *Peralta v. Continental Airlines, Inc.*, No. C 98-1252 MJJ, 1999 WL 193393, at *2 (N.D. Cal. March 30, 1999)
130. *Helge Management, Inc. v. Delta Airlines, Inc.*, No. 11-10299-RBC, 2012 WL 2990728, (D. Mass. July 19, 2012)
131. *Cohen v. Delta Air Lines, Inc.*, 751 F. Supp. 2d 677 (S.D. N.Y. 2010)
132. Article 20 Montreal Convention 1999.
133. Kastela, S., Miljak, Z., & Bozicevic, J. (2001). Air Carriers Liability for Damages According to the New Montreal Convention. *Promet Traffic-Traffico*, 13(1).
134. Article 22(3) Montreal Convention.
135. Lee, K. B. (2012). The Liability Regime of the Air Carrier under the National Legislation of Korea by Adopting the Montreal Convention. *The Korean Journal of Air & Space Law and Policy*, 27(2), 3-27.
136. Article 22(4) Montreal Convention.
137. Soyer, B., & Tettenborn, A. (2013). Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999). In *Carriage of Goods by Sea, Land and Air* (pp. 455-470). Informa Law from Routledge.

138. Article 36(1) Montreal Convention.
139. Franks, M. R. (2007). Airline Liability for Loss, Damage, or Delay of Passenger Baggage. *Fordham J. Corp. & Fin. L.*, 12, 735.
140. Kang-Bin, L. (2003). The Comparison of Carrier's Liability Regime for Air Cargo under Warsaw Convention and Montreal Convention. *문화산업연구*, 3(1), 319-334.
141. Article 36(3) Montreal Convention.
142. Trimarchi, A. (2019). Intermodal air-rail agreements: Legal aspects and considerations. *Air and Space Law*, 44(1).
143. Article 38(1) Montreal Convention.
144. Article 22(2) Warsaw Convention.
145. Article 22 Warsaw Convention.
146. Article 20 Warsaw Convention.
147. Tompkins Jr, G. N. (2014). Are the Objectives of the 1999 Montreal Convention in Danger of Failure?. *Air and Space Law*, 39(3).
148. Murphy, S. D. (2004). Ratification of the 1999 Montreal Convention on Aviation Liability. *The American Journal of International Law*, 98(1), 177.
149. Cheng, B. (2004). A new era in the law of international carriage by air: from Warsaw (1929) to Montreal (1999). *International & Comparative Law Quarterly*, 53(4), 833-859.
150. De Leon, P. M., & Eyskens, W. (2000). The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System. *J. Air L. & Com.*, 66, 1155.
151. Article 24 paragraph 1 states: 'In the instances covered by Articles 18 and 19, any action for damages, regardless of its merit, may be instituted solely under the terms and limitations set down in this Convention.' 'In the instances covered by Art. 17, the preceding paragraph also applies, without prejudice to the issues of who has the right to sue and what their separate rights are.'
152. 164; Kuhn 1989, p. 22. Ruhwedel 1999, p. 163; Kuhn 1989, p. 22. P. Martin, J.D. McClean, and others in Shawcross & Beaumont, *On Air Law*, (4th ed.) (London, Butterworths, (loose-leaf)) VII-[405], and M.A. Clarke, *Contracts of Air Carriage*, (London,

LLP, 2002), p. 156. *Emery Air Freight Corp. v. Nerine Nurseries*, Wellington Court of Appeal, 5 May, 14 July 1997 [1997] 3 New Zealand Law Reports 723.

153. For English law, see *British Airways v. Sidhu* (HL 12 December 1996, [1997] 2 Lloyd's Rep. 76, USA *El Al Israel Airlines v. Tsui Yuan Tseng* 525 U.S. 155 (1999). M.A. Clarke, *Contracts of air carriage*, (London, LLP, 2002), also contains a comprehensive reference to American case law.

154. Article 18(1) (First Schedule to the Malaysian Carriage by Air Act 1974 (the "CAA 1974").

155. Keenan, P. B., Shawcross, C. N., McMahon, J. F., Beaumont, K. M., Lester, A., & Martin, P. (1966). *Shawcross and Beaumont on air law*. Butterworths.

156. See *Nowell v. Qantas Airways Ltd.*

157. Article 18(2) (First Schedule to the Malaysian Carriage by Air Act 1974 (the "CAA 1974").

158. Article 18(4) (First Schedule to the Malaysian Carriage by Air Act 1974 (the "CAA 1974").

159. *Société National Air France v. Société Arlab* (Aix-en-Provence CA, 29 November 1983), (1985) 39 RFDA 478.

160. Goldhirsch, L. (2000). *The Warsaw Convention annotated: a legal handbook*. Kluwer Law International BV.

161. De Leon, P. M., & Eyskens, W. (2000). The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System. *J. Air L. & Com.*, 66, 1155.

REFERENCES

- <https://www.caam.gov.my/wp-content/uploads/2021/02/6.-Carriage-by-Air-Act-1974-1.pdf>
- Article 1 Warsaw-system conventions and Montreal Convention 1999.

- Article 22(4) Warsaw Convention 1929.
- Article 22 (5) of the 1955 Warsaw-Hague Convention.
- Article 22 (2) (b) Warsaw-Hague-MAP 4 Convention 1975.
- Article 22 (2) Warsaw-Hague Convention 1955, Art. 22 (2) (b) Warsaw-Hague-MAP 4 Convention 1975, and Article 22 (3) Montreal Convention 1999, the phrase "special declaration of value" is substituted by the phrase "special declaration of interest." The phrasing distinction is semantic. The term "special declaration of value" will be used throughout this study.
- Shawcross, *Air Law*, para 604.
- Article 3 Carriage by Air Act 1974 (Act 148).
- Thalin, C. (2002). The air carrier's liability for passenger damages – Article 17 of the Warsaw System and the new Montreal Convention. *Air Law/Spring 2002*. 1-61.
- Ingrid Koning, (2008), "Liability in Air Carriage, Carriage of Cargo Under the Warsaw and Montreal Conventions", Kluwer Law International.
- Article 1(1) Montreal Convention.
- Article 2(1) Montreal Convention.
- Yue, H. (2013). *Ma Meilan v. Thai Airways International Public Company Limited*. *Air and Space Law*, 38(2).
- Article 2(3) Montreal Convention.
- De Leon, P. M., & Eyskens, W. (2000). The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System. *J. Air L. & Com.*, 66, 1155.
- González, J. R. (2004). The survival of the Warsaw system and the new Montreal convention governing certain rules for international carriage by air: are the conflicts solved?.
- Cheng, B. (2000). 1999 Montreal Convention on International Carriage by Air Concluded on the Seventieth Anniversary of the 1929 Warsaw Convention (Part I), *The/Das Montrealer Ubereinkommen von 1999 uber die Beforderung im Internationalen Luftverkehr/La Convention de Montreal de 1999 Relative au Transport Aerien International*. *ZLW*, 49, 287.

- Larsen, P. B., Sweeney, J. C., & Gillick, J. E. (2012). Appendix 1: 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air. In *Aviation Law: Cases, Laws and Related Sources* (pp. 1331-1350). Brill Nijhoff.
- Field, A. (2006). International air carriage, the Montreal Convention and the injuries for which there is no compensation. *Canterbury L. Rev.*, 12, 237.
- Article 13 Montreal Convention 1999.
- De Leon, P. M., & Eyskens, W. (2000). The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System. *J. Air L. & Com.*, 66, 1155.
- Article 17(2) Montreal Convention 1999.
- Balfour, J., & van der Wijngaart, T. (2016). Montreal convention: To whom is the carrier liable in the event of delay. *Air & Space L.*, 41, 511.
- *Grein v. Imperial Airways Ltd*, [1937] 1 KB 50, CA. See Shawcross, *Air Law*, para. 348.
- Article 25 Montreal Convention 1999.
- Article 18(2) Montreal Convention 1999.
- Koning, I. (2008). Liability in air carriage. Carriage of cargo under the Warsaw and Montreal Conventions. *Air and Space Law*, 33(4/5).
- Goldhirsch, L. (2000). *The Warsaw Convention annotated: a legal handbook*. Kluwer Law International BV.
- McKay, J. (2002). The Refinement of the Warsaw System: Why the 1999 Montreal Convention Represents the Best Hope for Uniformity. *Case W. Res. J. Int'l L.*, 34, 73.
- Alhoudail, M. A. (2005). Air carrier liability: unfinished unification of private international air law.
- Southcott, R. F., & Strickland, C. Y. (2001). Canadian Maritime Law Update: 2000. *J. Mar. L. & Com.*, 32, 399.
- Smith, M. (2015). In the Wake of the Montreal Convention: Why Maritime Law Should Abolish Limited Liability for Personal Injury and Death Claims. *Austl. & NZ Mar. LJ*, 29, 36.

- Dempsey and Milde call this the ‘*comparative fault theory*’, see P.S. Dempsey and M. Milde, *International Air Carrier Liability: The Montreal Convention of 1999*, (Montreal, Centre for Research in Air & Space Law McGill University 2005), p. 167.
- *Peralta v. Continental Airlines, Inc.*, No. C 98–1252 MJJ, 1999 WL 193393, at *2 (N.D. Cal. March 30, 1999)
- Art 1(2), (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- *Helge Management, Inc. v. Delta Airlines, Inc.*, No. 11–10299–RBC, 2012 WL 2990728, (D. Mass. July 19, 2012)
- *Cohen v. Delta Air Lines, Inc.*, 751 F. Supp. 2d 677 (S.D. N.Y. 2010)
- Article 20 Montreal Convention 1999.
- Kastela, S., Miljak, Z., & Bozicevic, J. (2001). Air Carriers Liability for Damages According to the New Montreal Convention. *Promet Traffic-Traffico*, 13(1).
- Article 22(3) Montreal Convention.
- Lee, K. B. (2012). The Liability Regime of the Air Carrier under the National Legislation of Korea by Adopting the Montreal Convention. *The Korean Journal of Air & Space Law and Policy*, 27(2), 3-27.
- Article 22(4) Montreal Convention.
- Soyer, B., & Tettenborn, A. (2013). Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999). In *Carriage of Goods by Sea, Land and Air* (pp. 455-470). Informa Law from Routledge.
- Article 36(1) Montreal Convention.
- Franks, M. R. (2007). Airline Liability for Loss, Damage, or Delay of Passenger Baggage. *Fordham J. Corp. & Fin. L.*, 12, 735.
- Burleson, T., Keough, J., Plenge, C. F., & Lazara, J. H. (1969). Current Legislation and Decisions. *Journal of Air Law and Commerce*, 35(2), 249.
- Kang-Bin, L. (2003). The Comparison of Carrier’s Liability Regime for Air Cargo under Warsaw Convention and Montreal Convention. *문화산업연구*, 3(1), 319-334.
- Article 36(3) Montreal Convention.
- Trimarchi, A. (2019). Intermodal air-rail agreements: Legal aspects and considerations. *Air and Space Law*, 44(1).

- Article 38(1) Montreal Convention.
- Article 22(2) Warsaw Convention.
- Article 22 Warsaw Convention.
- Article 20 Warsaw Convention.
- Tompkins Jr, G. N. (2014). Are the Objectives of the 1999 Montreal Convention in Danger of Failure?. *Air and Space Law*, 39(3).
- Murphy, S. D. (2004). Ratification of the 1999 Montreal Convention on Aviation Liability. *The American Journal of International Law*, 98(1), 177.
- Cheng, B. (2004). A new era in the law of international carriage by air: from Warsaw (1929) to Montreal (1999). *International & Comparative Law Quarterly*, 53(4), 833-859.
- Srivastava, A. (2020). Carriage of Goods by Air. In *Modern Law of International Trade* (pp. 259-266). Springer, Singapore.
- De Leon, P. M., & Eyskens, W. (2000). The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System. *J. Air L. & Com.*, 66, 1155.
- Article 24 paragraph 1 states: 'In the instances covered by Articles 18 and 19, any action for damages, regardless of its merit, may be instituted solely under the terms and limitations set down in this Convention.' 'In the instances covered by Art. 17, the preceding paragraph also applies, without prejudice to the issues of who has the right to sue and what their separate rights are.'¹⁶⁴; Kuhn 1989, p. 22. Ruhwedel 1999, p. 163; Kuhn 1989, p. 22. P. Martin, J.D. McClean, and others in Shawcross & Beaumont, *On Air Law*, (4th ed.) (London, Butterworths, (loose-leaf)) VII-[405], and M.A. Clarke, *Contracts of Air Carriage*, (London, LLP, 2002), p. 156. *Emery Air Freight Corp. v. Nerine Nurseries*, Wellington Court of Appeal, 5 May, 14 July 1997 [1997] 3 New Zealand Law Reports 723.
- For English law, see *British Airways v. Sidhu* (HL 12 December 1996, [1997] 2 Lloyd's Rep. 76, USA *El Al Israel Airlines v. Tsui Yuan Tseng* 525 U.S. 155 (1999). M.A. Clarke, *Contracts of air carriage*, (London, LLP, 2002), also contains a comprehensive reference to American case law.

- Article 18(1) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- Keenan, P. B., Shawcross, C. N., McMahon, J. F., Beaumont, K. M., Lester, A., & Martin, P. (1966). *Shawcross and Beaumont on air law*. Butterworths.
- See *Nowell v. Qantas Airways Ltd.*
- Article 18(2) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- Article 18(4) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- *Société National Air France v. Societé Arlab* (Aix-en-Provence CA, 29 November 1983), (1985) 39 RFDA 478.
- Article 1(3), (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- Goldhirsch, L. (2000). *The Warsaw Convention annotated: a legal handbook*. Kluwer Law International BV.
- De Leon, P. M., & Eyskens, W. (2000). The Montreal Convention: Analysis of Some Aspects of the Attempted Modernization and Consolidation of the Warsaw System. *J. Air L. & Com.*, 66, 1155.
- Abeyratne, R. (2018). Liability Issues Under Treaty Law. In *Law and Regulation of Air Cargo* (pp. 203-215). Springer, Cham.
- Cousins, J. (1976). Warsaw Convention--Air Carrier Liability for Passenger Injuries Sustained within a Terminal. *Fordham L. Rev.*, 45, 369.
- Kang-Bin, L. (2003). The Comparison of Carrier’s Liability Regime for Air Cargo under Warsaw Convention and Montreal Convention. *문화산업연구*, 3(1), 319-334.
- 2. <https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf>

- Reiber, P. (1956). Ratification of the Hague Protocol; Its Relation to the Uniform International Air Carrier Liability Law Achieved by the Warsaw Convention. *J. Air L. & Com.*, 23, 272.
- Beaumont, K. M. (1955). WARSAW CONVENTION OF 1929, AS AMENDED BY THE PROTOCOL SIGNED AT THE HAGUE, ON SEPTEMBER 28, 1955, THE. *The Journal of Air Law and Commerce*, 22, 414.
- Art 30(3) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- Article 18 (First Schedule, Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- Mankiewicz, R. H. (1956). Hague Protocol to Amend the Warsaw Convention. *The American Journal of Comparative Law*, 5(1), 78-97.
- Article 26(2) (First Schedule, Malaysian Carriage by Air Act 1974 (the “CAA 1974”)
- *Western Digital Corporation and ors. v. British Airways Plc.* [2001] Q.B. 733 (C.A.)
- Article 29(First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”)
- FOLLOWS, H. A. A. (1944). CONVENTION for the Unification of Certain Rules for International Carriage by Air.
- *All Transport v. Seaboard World Air Lines*, 349 NYS 2d 277 (1988).
- 3. https://unctad.org/system/files/official-document/sdtetlb20061_en.pdf
- Weigand, T. A. (2000). The Modernization of the Warsaw Convention and the New Liability Scheme for Claims Arising Out of International Flight. *Massachusetts Law Review*, 86.
- Article 22(2) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- Article 18(1) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- Shawcross, *Air Law*, para. 589
- *Nowell v. Qantas Airways Ltd* 22 Avi 18, 071 (WD Wash, 1990).
- Article 18(2) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).

- Article 18(4) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- Abeyratne, R. (2018). Liability Issues Under Treaty Law. In *Law and Regulation of Air Cargo* (pp. 203-215). Springer, Cham.
- *Soci t  National Air France v. Soci t  Arlab* (Aix-en-Provence CA, 29 November 1983), (1985) 39 RFDA 478.
- Berlingieri, F. (2003). A New Convention on the Carriage of Goods by Sea: Port-to-Port or Door-to-Door. *Unif. L. Rev. ns*, 8, 265.
- https://unctad.org/system/files/official-document/sdtetlb20061_en.pdf accessed on 5/1/2022.
- Article 18(5) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- PROTOCOL, H. Case Law Digest.
- Diederiks-Verschoor, I. P. (2001). The liability for delay in air transport. *Air and Space Law*, 26(6).
- Article 31(1) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- Article 31(2) (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- *Siemens Ltd v. Schenker International (Australia) Pty Ltd & Another*, [2004] HCA 11, a case decided by Australia's supreme court.
- Sassoon, D. M. (1971). Liability for the international carriage of goods by sea, land and air: some comparisons. *J. Mar. L. & Com.*, 3, 759.
- Article 19 (First Schedule to the Malaysian Carriage by Air Act 1974 (the “CAA 1974”).
- Whalen, T. J. (2000). The New Warsaw Convention: The Montreal Convention. *Air and space law*, 25(1).

- Gazdik, J. G. (1961). The Conflicts and State Obligations under the Warsaw Convention, the Hague Protocol and the Guadalajara Convention. *J. Air L. & Com.*, 28, 373.
- https://unctad.org/system/files/official-document/sdtetlb20061_en.pdf accessed on 5/1/2022.6.
- Ereli, E. (1963). The Hague Protocol: An Abuse of Executive Discretion. *UCLA L. Rev.*, 11, 358.
- Schoner, D. (1981). Art. 25 Hague Protocol–Theft of bank notes: German Federal Supreme Court (Bundesgerichtshof), decision of 16 February 1979. *Air and Space Law*, 6(2).
- *OLG Stuttgart*, 24.02.93, *TranspR* 1995, 74.
- See *Rustenburg Platinum Mines Ltd. v. South African Airways and Pan American World Airways Inc.* [1977] 1 Lloyd's Rep. 564 at 576.
- Article 25 (2)(a) Hague Protocol.
- Article 30 Hague Protocol.
- Mankiewicz, R. H. (1969). Air Transport Liability-Present and Future Trends. *J. World Trade L.*, 3, 32.
- Chan, L. S. (2000). Claims Arising from Air Carriage. *Singapore Academy of Law Journal*, 12(2), 331-344.
- Tompkins, G. N. (2010). *Liability rules applicable to international air transportation as developed by the courts in the United States: From Warsaw 1929 to Montreal 1999* (Vol. 7). Kluwer Law International BV.
- Article 22 (1)-(3) Warsaw Convention 1929.
- <https://www.mcgill.ca/iasl/files/iasl/guadalajara1961.pdf> accessed on 22/1/2020
- FOLLOWS, H. A. A.
- ICAO Doc.
- Whalen, T. J. (2000). The New Warsaw Convention: The Montreal Convention. *Air and space law*, 25(1).
- Conti, C. (2001). Code-sharing and air carrier liability. *Air and Space Law*, 26(1).

- Sundberg, J. W. (1975). Guadalajara Convention Live from Cyprus, *The. Air L.*, 1, 83.
- Chan, L. S. (2000). Claims Arising from Air Carriage. *Singapore Academy of Law Journal*, 12(2), 331-344.
- Carpanelli, E. (2015). Cooperative Ventures between Air Carriers: Time to Reform the International Rules. *Issues Aviation L. & Pol'y*, 15, 307.
- Article VII Guadalajara Convention 1961.
- Fujita, T. (2008). The comprehensive coverage of the new convention: performing parties and the multimodal implications. *Tex. Int'l LJ*, 44, 349.
- Forrest, R. M. (1961). Carriage by Air: The Hague Protocol. *International & Comparative Law Quarterly*, 10(4), 726-738.
- Article X Guadalajara Convention 1961.
- Harakas, A. J. (1992). The Montreal Protocols and the Proposed Supplemental Compensation Plan Enabling Legislation. *J. Int'l L. & Prac.*, 1, 49.
- Article III Guadalajara Convention 1961.
- Teo, J. C. C. (2003). Breaking Convention: When Is a Carrier's Limit of Liability under the Warsaw Convention Broken?: Beyond Beryl Claire Clarke & Ors V Silkair (Singapore) PTE LTD. *Singapore Academy of Law Journal*, 15(1), 1-29.
- See *Ericsson v. KLM*
- Montreal Protocol No. 4 amending the Warsaw Convention for the Unification of Certain Rules Relating to International Air Carriage, signed at Warsaw on 12 October 1929, as amended by the Hague Protocol of 28 September 1955, signed at Montreal on 25 September 1975.
- Article XV, Article XVII (2) and Article XIX (2) MAP 4 (Montreal Protocol No. 4) 1975.
- Sheinfeld, D. I. (1979). From Warsaw to Tenerife: A Chronological Analysis of the Liability Limitations Imposed Pursuant to the Warsaw Convention. *J. Air L. & Com.*, 45, 653.

- Hastings, W. K. (1996). Living with an Archaic Treaty: Solving the Problem of the Warsaw Convention's Gold Clause. *Victoria U. Wellington L. Rev.*, 26, 143.
- Diederiks-Verschoor, I. P. (2001). The liability for delay in air transport. *Air and Space Law*, 26(6).
- <https://transportrecht.org/wp-content/uploads/WA-HagueProtocol1955.pdf> accessed on 20/3/2020.
- Milde, M. (1975). Legal work in ICAO. *Air and Space Law*, 1(2).
- Fitzgerald, G. F. (1976). The Four Montreal Protocols to Amend the Warsaw Convention Regime Governing International Carriage by Air. *J. Air L. & Com.*, 42, 273.
- Article 5 (1) Warsaw-Hague-MAP 4 Convention 1975 and Art. 4 (1) Montreal Convention 1999.
- Article 7(2) MAP 1975.
- Article 6 (3) of the Warsaw Convention 1929 states that "upon acceptance of the commodities," and the Warsaw-Hague Convention 1955 adjusts this to say "prior to the loading" of the cargo onto the aircraft.
- 1975 Warsaw-Hague-MAP 4 Convention Article 5 (2)
- Fitzgerald, G. F. (1976). The Four Montreal Protocols to Amend the Warsaw Convention Regime Governing International Carriage by Air. *J. Air L. & Com.*, 42, 273.
- Article 8 Warsaw Convention 1929.
- <https://www.caam.gov.my/wp-content/uploads/2021/02/6.-Carriage-by-Air-Act-1974-1.pdf>
- Article 9 Warsaw Convention 1929.
- Article 8 Warsaw-Hague Convention 1955.
- Abeyratne, R. I. (1997). Regulatory management of the Warsaw System of air carrier liability. *Journal of Air Transport Management*, 3(1), 37-45.
- Article 18 (3) Warsaw-Hague-MAP 4 Convention 1975.
- Koning, I. (2008). Liability in air carriage. Carriage of cargo under the Warsaw and Montreal Conventions. *Air and Space Law*, 33(4/5).

- Tompkins, G. N. (2010). *Liability rules applicable to international air transportation as developed by the courts in the United States: From Warsaw 1929 to Montreal 1999* (Vol. 7). Kluwer Law International BV.
- Clarke & Yates, Land and Air. Take notice that under English law, packing is considered to be part of the cargo.
- Cheng, B. (2004). A new era in the law of international carriage by air: from Warsaw (1929) to Montreal (1999). *International & Comparative Law Quarterly*, 53(4), 833-859.
- See *Winchester Fruit Ltd v. American Airlines Inc.*, [2002] 2 Lloyd's Rep. 265 (276).
- The 1975 Warsaw-Hague-MAP 4 Convention and the 1999 Montreal Convention remove reference to when the carrier signs, as the carrier's signature is intended to acknowledge receipt of the cargo, which occurs when the carrier hands the consignor the third part of the air waybill.