

IBA Conference 2016

Aviation Liability issues for Airlines, Manufacturers, & Governments

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What I will cover....

- **Airline Liability from an English law perspective**
- **Outline the English procedural framework**
- **Implications of a possible UK 'Brexit' (departure from the EU)**
- **Middle East perspective – key issues**

Airline Liability

- **International Liability Conventions**
- **EU Legislation**
- **Domestic Legislation**

Airline Liability

International Liability Conventions

- Warsaw Convention 1929 (including Warsaw-Hague; Guadalajara; and MAP 1, 2 & 4)
- Montreal Convention 1999

EU Legislation

- Regulation 889/2002 amending Regulation 2027/97 – Air carrier liability in respect of the carriage of passengers and their baggage by air.
- Regulation 785/2005 – Insurance requirements for air carriers & aircraft operators
- Regulation 261/2004 – denied boarding, cancellation or long delay of flights
- Regulation 1107/2006 – rights of disabled/reduced mobility passengers

Airline Liability

Domestic Legislation

- Carriage by Air Act - as amended
- Carriage by Air Acts (implementation of the Montreal Convention 1999) Order 2009
- Fatal Accidents Act 1976
- Corporate Manslaughter & Corporate Homicide Act 2007
- Various other Statutory Instruments

Regulation (EC) 2027/97 as amended by Regulation (EC) 889/2002 - air carrier liability

- Implements Montreal Convention 1999 provisions within the EU in respect of passengers and baggage
- Also applies to carriage within a single member state
- Refers to adequate insurance to meet liability obligations (see also Reg 785/2005)
- Advance payments - to meet immediate economic needs of injured pax or relatives of deceased pax, proportionate to hardship suffered.
 - For deceased pax - not less than 16,000SDR. See also Art 20, MC99
- Requirement for clear notices to passengers, advising them of the liability limits - set out as Annex A

Personal Injury

- Damages aim to put the injured claimant in the same financial position as he or she would have been had it not been for the injury
- Compensation awards may be a lump sum or periodical payments, or both
- Compensates:
 - loss of future income
 - loss of amenity
 - expenses
 - pain and suffering – in an aviation liability context, this is limited to physical injury
- *Morris v KLM and King v Bristow Helicopters*
- Damages are calculated as at the date of trial
- JSB Guidelines provides helpful basic guidance on quantum

Death

Damages calculated at the date of death - considered to be the only certain event. Everything that might have happened after that date remains uncertain.

Two possible ways to make a claim for a fatal accident resulting from another's negligence:

- *Law Reform (Miscellaneous Provisions) Act 1934*

Claim brought by the deceased's estate for the damages that could otherwise have been claimed by the deceased – e.g. personal injuries.

- *Fatal Accidents Act 1976*

Compensates the dependants for bereavement and loss of dependency, to the extent they were dependant on the deceased.

Claims for the Deceased's Estate: Law Reform (Miscellaneous Provisions) Act 1934

- Damages based on the losses which the deceased would have been able to claim based on his injuries the instant before he died. Any damages recovered pass to the deceased's estate and to his beneficiaries (which may not be his dependants).
- Claim for the losses that the deceased could have claimed for had he lived:
 - pain and suffering
 - damage to chattels (eg baggage, clothing damaged)
 - pre-death loss of earnings, loss of expectation of future capital, and
 - medical expenses
- Funeral expenses incurred by the estate.

Claims for Dependants: Fatal Accidents Act 1976

Dependants:

- Spouse/civil partner
- Parent/grandparent
- Child/ grandchild (including illegitimate and step)
- Siblings – and their children
- Aunt/uncle – and their children

Law Commission made a number of proposals to reform the Fatal Accidents Act in 1999 which were adopted by the Government in the Civil Law Reform Bill 2009, including extending dependants to anyone "*wholly or partly maintained by the deceased immediately before the death*". In 2011 the Bill was shelved.

Fatal Accidents Act – what can dependants claim?

- **Bereavement damages**

- Fixed sum of £12,980 – a token sum in recognition of grief. Rarely increased. No requirement to prove actual loss

- **Funeral expenses**

- **Dependency claims**

- Actual financial loss as a result of the deceased's death
- reasonably expected to receive financial benefit arising from the dependent family relationship with the deceased, had the deceased not died
- The dependence could be either financial or in terms of services provided (e.g. loss of care, housework or baby sitting services)

English civil Procedure

- Common Law legal system
- Adversarial - each party makes its own case
- Increasing focus on conciliatory behaviour to bring parties together
 - Pre-action protocols – e.g. Personal Injury PAP
 - Pre-action disclosure
 - Party experts are encouraged to meet and agree
 - Joint experts sometimes appointed
 - Proportionate and efficient case management
- ADR is encouraged
 - DQ question – stays often granted by the Court
 - CAA – ADR for 261, baggage, other delay etc
 - ADR – European ADR Directive

Multi Party Litigation

- Individual claims
- Generally, no US style class action litigation
- Sometimes test cases
- Group Litigation Orders - “common or related issues” of fact or law. Many claims will fail to satisfy the GLO test.
- Only 94 GLOs since 2000 – including DVT and 2 relating to the Gerona accident (one under MC999 and one under PTD).
- UK has considered other forms of multi-party litigation – particularly discrimination/competition claims

“Brexit” – Possible implications?

- At present, both the process and implications of Brexit remain uncertain
- A significant amount of aviation liability legislation is largely led by the EU and implemented into English law
- Most likely UK will affirm all international Treaties and Conventions and EU Regulations and Directives as English law
- EU Directives/Regulations are already implemented into English law by virtue of SIs.
- **Options** which take account of the broader issue of market access:
 - ECAA (European Common Aviation Area) membership – eg Norway
 - Bilateral Agreement with EU – eg SwitzerlandBoth would likely require adopting/retaining EU aviation legislation

Middle East – Shariah law implications

“Diyah” – Blood money

- Compensation sum payable for personal injury and death to victim/family
- Historically varies by gender, religion and jurisdiction to another (e.g. 100 camels for a single muslim male)
- Price may vary according to the value of camels
- Personal injury usually attracts fractions of Diyah, depending upon severity

Shariah Distribution of “deceased’s wealth”

- Surviving wife, son and daughter: $\frac{1}{8}$ to wife, $\frac{7}{12}$ to son, $\frac{7}{24}$ to daughter
- Surviving husband, son and daughter - $\frac{1}{4}$ husband, $\frac{1}{2}$ son, $\frac{1}{4}$ daughter

In practice, inheritance and damages often treated the same, especially for minors.

Thank you for listening

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