

# IFTTA Slides on Montreal Convention

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# Airline Liability for Passenger Harm

- ◎ On international travel by aircraft airline liability governed by agreement between states called the 'Montreal Convention'
- ◎ Sponsored by UN body responsible for international civil aviation – ICAO, based in Montreal



# Montreal Convention

- ◎ Gradually replaces previous law – Warsaw Convention 1929 as amended by various protocols
- ◎ Creates global uniform legal rules governing airline liability to compensate passengers for injury, baggage loss and delay during international travel by aircraft



# Montreal ...

- ⦿ Benefit of having global rules is that airlines are judged by same **substantive** rules no matter where sued
- ⦿ Disadvantage is that case outcomes not necessarily same because some Montreal rules are so general
- ⦿ It allows **different interpretations** in different states



# Montreal ...

- ⊙ No overall Montreal court to resolve differences of interpretation
- ⊙ Also airline can still be sued in different states for the same accident
- ⊙ Though many claims are consolidated and end up in US courts because ...



# Montreal applies

- ⊙ To all (paying or free) **international** passenger travel by **aircraft** (including helicopters)
- ⊙ International means where places of departure and destination are:
  - ◆ in different states, or
  - ◆ in the same state but with an agreed stopping point in another state



# Montreal applies ....

- ⦿ To travel inside a state that connects with an international flight (and seen as one trip)
- ⦿ In EU to travel between EU states
- ⦿ In EU to domestic travel inside an EU state
- ⦿ Airline cannot vary/exclude Montreal
- ⦿ As more states ratify Montreal Warsaw applies to less and less air travel



# Montreal or Warsaw?

- ⦿ Montreal applies to **return** (round) trip departing from state which ratifies Montreal (regardless of where stop is)
- ⦿ Montreal applies to **single** trip when departing and arriving states have ratified Montreal
- ⦿ Warsaw still applies to single trip arriving in state which has not ratified Montreal
- ⦿ Warsaw still applies to return trip departing from state which has not ratified Montreal





# Montreal applies ...

- ⊙ Only to passenger claims against **airlines** and their **employees** and **agents**
- ⊙ Not to passenger claims against fellow passengers or airports or to crew claims against passengers
- ⊙ Injured passengers often still try to sue airline because:
  - ◆ It can be easier to win against an airline
  - ◆ Can potentially sue in a more convenient state



# Which airline to sue?

- ⊙ Generally only **actual carrier** at time of accident or delay (unless otherwise agreed that first carrier ...)
- ⊙ So:
  - ◆ with successive carriers passenger cannot sue airline which issued the tickets or with whom booking/contract was made unless it was the actual carrier
  - ◆ with code-share – passive airline cannot be sued



# Which airline to sue?

- ⊙ Where contracting airline uses another airline (actual carrier) to operate the flight, both can be sued
- ⊙ For baggage travelling passenger can sue:
  - ◆ First carrier
  - ◆ Last carrier
  - ◆ Carrier when damage/ delay happenedeither individually or collectively



# Montreal applies to passenger claims against airlines for ...

- ⊙ Death or bodily (personal) injury – Article 17 (1)
- ⊙ Checked baggage and hand luggage damage/loss – Article 17 (2)
- ⊙ Passenger/baggage delay – Article 19



# Compensation

- ⊙ Only **compensatory** damages related to individual loss can be awarded
- ⊙ Loss typically includes:
  - ◆ past/future medical expenses
  - ◆ past/future loss of income or profit
  - ◆ non-material damage such as pain and suffering



# Compensation

- ⦿ No punitive, exemplary damages
- ⦿ But a fixed **penalty** payment (unrelated to variable individual loss) does not compensate and is not damages and is allowed
- ⦿ Thus in EU (under EU law, not Montreal) airlines must pay fixed amounts (€250/400/600) for overbooking (delay or delay) and for delays caused by cancelled flights where airline is blameworthy



# Airline Defence

- ◎ General airline defence of **contributory** negligence meaning passenger compensation is **reduced** (partially/totally) because passenger harm caused by passenger's own act e.g. not heeding safety information, not wearing seat belt, not returning to seat ...



# Personal Injury ...

- ◎ Article 17 (1) imposes absolute liability for **accidents** causing **bodily injury** on **board or during embarking/disembarking** (plane-related)
  - ◆ For claims up to 100,000 SDR's (artificial unit of currency used by IMF)
- ◎ Absolute means its no excuse to say 'it wasn't our fault' or 'it was bad weather' or 'it was a bomb'





# Personal Injury ...

- ⊙ For claims above 100,000 SDR's no absolute liability, airline has potential defence:
  - ◆ but only if it can prove it took all reasonable care to prevent the damage, i.e. that it was not **to blame/at fault**



# Personal Injury ...

- ⊙ In order to show it was not to blame airline has to show **how accident happened** and then show its fault did not cause it
- ⊙ If it cannot show how accident happened airline cannot raise the defence



# 'Accident'

- ⊙ An unexpected or unusual event external to passenger which causes an injury (not the injury itself)
- ⊙ Covers aviation-related events including plane/equipment malfunction, pilot error, collision, crash/emergency landing
- ⊙ Highjacking, terrorist attacks



# 'Accident'

- ⊙ Cabin crew injuring passenger (spilling hot tea/coffee)
- ⊙ Passengers internal reaction to normal flight is not an 'accident'
- ⊙ Passenger heart/asthma attack, internal medical complications etc, deep vein thrombosis, fear of flying during flight (or airline response to it) is generally not an 'accident' because cause is not external



# Non-aviation-related risks?

- ⊙ No consensus whether 'accident' includes non-aviation-related risks
- ⊙ Dominant view that it does
- ⊙ Objects falling from overhead bins, reclining seats causing injury
- ⊙ Passenger slipping on wet/slippery (toilet) floor
- ⊙ Passenger falling on passenger while getting into/out of seat



# Non-aviation-related risks?

- ⊙ Drunk passengers accidentally/deliberately causing injury to others/themselves
- ⊙ Angry passenger assaulting another passenger
- ⊙ Passenger sexually assaulting another passenger



# 'Bodily Injury'

- ⊙ Includes physical injury and connected mental impact
- ⊙ No consensus whether mental impact alone (trauma, fright etc) is included
- ⊙ Dominant view in English-speaking states is that no damages can be awarded for this
- ⊙ But many states (including continental EU, Latin American states) do allow damages for different types of 'non-material' loss including mental injury



# Plane-related means ...

- ⊙ Inside plane
- ⊙ **'embarking or disembarking'** is wider than getting in/out of plane
- ⊙ Courts use broad test based on location of event, airline control of passenger, proximity to plane etc.
- ⊙ Typically includes distance between departure gate and plane (terminal walkway, walking across apron to/from plane or in bus to/from plane)





# Plane-related ...

- ⦿ Can also include inside terminal while queuing up at departure gate
- ⦿ But probably not while walking to departure gate (falling on escalator)
- ⦿ Disembarking finishes when passenger enters terminal
- ⦿ Injury while at passport control or in baggage reclaim area not governed by Montreal



# Suing

- ⦿ **When to sue?** – within 2 years of scheduled date of arrival at destination
- ⦿ **Where to sue?**
- ⦿ Montreal widened passenger choice of jurisdiction in which to sue airline
- ⦿ But no matter how many different jurisdictions (or defendants) passenger sues, still cannot obtain more in aggregation than limits set by Montreal



# Suing

- ◎ Now passenger can sue airline where:
  - ◆ Its domiciled (its headquarters) or has its principal place of business
  - ◆ **the ticket was sold**
  - ◆ the plane's **final destination was**
  - ◆ **passenger lives** (principal and permanent residence - if its a Montreal state) if airline (or a code-share partner) flies there and owns/leases premises ...



# Suing only under Montreal?

- ⦿ Does Montreal provide the only legal ground for suing an airline for harm arising out of international air travel?
- ⦿ Relevant article, Article 29, uses ambiguous language
- ⦿ No global consensus on correct interpretation of Article 29
- ⦿ Dominant view in English-speaking states is that passenger must sue under Montreal or not at all



# Suing only under Montreal?

- ⊙ Which means if claim is for damages for harm other than personal injury/baggage loss or delay, no claim/compensation possible
- ⊙ Meaning no compensation for in-cabin false arrest, defamation, racial/disability/religious discrimination, in-flight breach of contract etc.



# Checked Baggage

- ⊙ Once **checked-in** if baggage is destroyed, lost or damaged the airline is automatically liable to compensate the passenger
- ⊙ No defence of 'we took reasonable care' or 'it wasn't our fault'
- ⊙ But with limit up to 1000 SDR's



# Checked Baggage

- ⦿ Declaration of interest at check-in for greater values
- ⦿ No limit if passenger proves damage was done deliberately/recklessly by airline employee/agent acting in the course of employment and knowing damage would probably result
- ⦿ Can be assumed if damage is bad enough



# Hand Luggage

- ⊙ If passenger hand luggage is stolen or damaged passenger must prove airline fault to win compensation from airline ... cap of 1000 SDR's
- ⊙ Difficult to do unless, say, cabin crew took hand luggage and placed it in an overhead bin which passenger did not know about





# Delayed Checked Baggage

- ⦿ Airline is liable for **damage** to passenger caused by delayed baggage
- ⦿ If delay but no damage, no liability
- ⦿ Airline defence of proving it took all reasonable measures to avoid (not the delay but) the damage resulting from the delay, or it was impossible to ... cap of 1,000 SDR's



# Suing for damaged/delayed Baggage

⊙ Legal claim can only be made if passenger complains in writing:

- ◆ within 7 days (for damaged checked baggage)
- ◆ Within 21 days (for delayed checked baggage)



# Flight Delay

- ⊙ Under Montreal airline is liable (not for flight delay but) for **damage** caused by flight delay to passenger **present at airport** and ready and able to travel
- ⊙ Montreal does not apply to delay when passenger never departs



# Flight Delay

- ⊙ Can be delay in departing or in arrival
- ⊙ Airline not liable when delay is caused by passenger's own act (spending too much time in bar/duty-free shop)
- ⊙ Airline can avoid liability if it proves it took all reasonable measures to avoid the damage or that it was impossible to take such measures



# Flight Delay

- ◎ Typical examples of reasonable measures to avoid delay include:
  - ◆ public address announcements of flight departure
  - ◆ adequate signage on how to reach departure gate,
  - ◆ sometimes time needed to get to departure gate



# Flight Delay

- ⊙ Defence not applicable when overbooking causes delay because ...
- ⊙ Max. compensation awardable limited to 4150 SDR's
- ⊙ Damage (consequential loss) is typically cost of accommodation, taxis, phone calls etc. while awaiting same or another flight



# Flight Delay

- ⊙ Can also be loss of income while delayed
- ⊙ No consensus whether loss of holiday time/enjoyment, frustration etc. amounts to damage
- ⊙ Some states allow it, others do not



# Flight Delay

- ⊙ Buying another flight too soon on different airline to get home quicker is probably not recoverable as damage
- ⊙ Because delay per se is not a refusal to perform the contract (and does not entitle passenger to treat contract as repudiated and so buy another ticket)





# Flight Delay

- ⦿ Because airlines typically make sure flight times are not part of the travel contract
- ⦿ No consensus on how long passenger must wait before booking another flight



# Weakness of Montreal Flight Delay Rules

- ⊙ Flight delay is an increasing problem for passengers because ...
- ⊙ Montreal delay rules do not address the significant **immediate** consequences of flight delay for passengers
- ⊙ Because passenger needs to wait for any damage and to see if airline can prove it took reasonable measures
- ⊙ Airlines do not have to respond immediately to passenger claims



# Weakness ....

- ◎ So, Montreal does not as such force airlines:
  - ◆ to look after delayed passengers
  - ◆ not leave them waiting long periods inside plane
  - ◆ offer refreshments, food, accommodation
  - ◆ re-route
  - ◆ offer refunds and bring home if necessary



# New Trends

- ◎ Trend now in some states to pass laws forcing airlines to protect delayed passengers against immediate consequences of different types of flight delay
- ◎ Airlines can be made subject to a state regulator or enforceable rights given to consumers or a combination of both



# New Trends

- ⦿ Airlines are resisting this trend and rely on Article 29 of Montreal to say such laws are not allowed because Article 29 says Montreal's delay remedy provides the only remedy airlines can be made subject to
- ⦿ In EU Regulation 261/2004 (which offers protection for immediate consequences of delay caused by overbooking, cancellation and long delay) held by court to have avoided and not be affected by Montreal



# New Trends

- ⊙ Because it targets generalised passenger consequences, not individual ones
- ⊙ Also when pre-set fixed sums (€250/400/600) are awarded to delayed passengers, its not as compensation (because it does not vary with individual loss), but as a civil penalty

