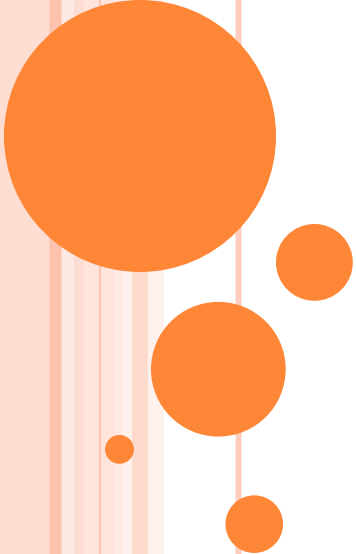




AVIATION LIABILITY-I: INTERNATIONAL CONVENTIONS

BY:

Ms. Ruchi Jain

Research Associate, CADL, NALSAR University of Law

Ph.D. Scholar, NLIU, Bhopal

CONTENTS

- ❑ What is a Liability?
- ❑ What are the Types of Liability?
- ❑ What is a Tort Liability?
- ❑ Categories of Torts
- ❑ Negligence (Essentials)

Contd..

- ☐ Rule of Contributory Negligence
- ☐ Vicarious Liability
- ☐ Strict Liability
- ☐ Absolute Liability

Contd...

- ❑ Aviation Liability
- ❑ Types of Damages
- ❑ What is Air Carrier Liability?
- ❑ Introduction to Air Carrier Liability

Contd...

- ❑ Warsaw Convention 1929
- ❑ Cases on Air Carrier Liability
- ❑ Montreal Convention 1999

WHAT IS LIABILITY?

Meaning

A 'Liability' can mean something that is a hindrance or puts an individual or group at a disadvantage, or something that someone is responsible for, or something that increases the chance of something occurring (a cause).

(Legal Rights & Legal Duties)

TYPES OF LIABILITY

- ❑ Legal Liability : (legal binding obligation to pay debts)
- ❑ Vicarious Liability : (responsibility of the superior for the acts of subordinate)
Ex: Refueling Process in Airport
- ❑ Limited Liability : (responsibility based on investment) Ex: Shareholders attached to an Airport Co. (Legal Entity)

Contd..

- Product Liability : (responsibility not to sell defective product)
Ex: Aviation Products Liability-Contracts
can cover Engine manufacturers,
avionic software producers or similar
businesses)
- Public Liability Civil : (is part of the Law of Torts – which focuses
on Wrongs-based on Duty of Care or
Standard of Care)

WHAT IS TORT LIABILITY?

ESSENTIALS

1. There must be an act or omission on the part of the Defendant.
2. The act or omission should result in legal damage (injury),
i.e. violation of a legal right vested in the Plaintiff.

CATEGORIES OF TORTS

- ❑ Intentional Torts : (Ex: Battery – Punching on other fellow's nose)
- ❑ Negligence : (Duty, Breach of Duty, Proximate Cause, Damages)
- ❑ Strict Liability : (Liability regardless of blame-worthiness or Fault)

NEGLIGENCE

❑ Negligence has TWO meanings:

1. Negligence as a mode of committing certain torts.

Example:

Negligently or Carelessly committing Trespass or Nuisance, Defamation. In this context it denotes **Mental Element**.

2. Negligence is considered as a SEPARATE TORT. It means a **conduct** which creates a risk of causing damage, rather than a state of mind.

Example:

In Donoghue v Stevenson (1932) A.C. 562 the Court held that where there is a duty to take care then there is Negligence.

ESSENTIALS OF NEGLIGENCE

- ❑ In an action for Negligence, the Plaintiff has to prove the following essentials:
 1. That the Defendant owed **Duty of Care** to the Plaintiff.
 2. The Defendant made a **Breach of that Duty**.
 3. The Plaintiff suffered **Damage** as a consequence thereof.

RULE OF CONTRIBUTORY NEGLIGENCE

□ **Meaning**

When the Plaintiff by his own want of care contributes to the damage caused by the negligence or wrongful conduct of the Defendant, he is considered to be guilty 'Contributory Negligence'

EXAMPLES ON CONTRIBUTORY NEGLIGENCE

Contd..

□ Example:

- i) The Damage occurred due to propeller accident through contributory negligence.
- ii) Negligence on the part of the Passenger in not fastening the safety belt when had been cautioned to do so.
- iii) The Passenger by his negligence met with an accident while stepping from an aircraft onto a landing platform.
- iv) The Passenger was injured while embarking an Aircraft.

VICARIOUS LIABILITY

- Generally, a person is liable for his own wrongful acts and one does not incur any liability for the acts done by others.
- In certain cases, however, vicarious liability, that is the liability of one person for the act done by another person, may arise.
- In order that the liability of A for the act done by B can arise, it is necessary that there should be a certain kind of relationship between A and B and the wrongful act should be, in a certain way, connected with that relationship.

COMMON EXAMPLES OF VICARIOUS LIABILITY

Contd...

- ☐ Liability of the Principal for the Tort of his Agents
- ☐ Liability of Partners of each other's Tort
- ☐ Liability of the Master for the Tort of his servant

STRICT LIABILITY

There are situations:

- ❑ when a person may be liable for some harm even though he is not negligent in causing the same, (or)
- ❑ There is no intention to cause the harm, (or)
- ❑ Sometimes he may even have made some positive efforts to avert the same.
- ❑ In other words, sometimes the law recognizes **'NO FAULT LIABILITY'**

Contd...

❑ **Case:** Rule of '**No Fault Liability**' was laid down in Rylands v. Fletcher (1868) L.R. H.L. 330.

❑ **Rules:**

- i) Dangerous Things (Ex: Aircraft Turbine Fuel)
- ii) Escape (Leakage of Fuel causing damage)
- iii) Non-natural Use of Land (Commercial Purpose)

❑ **Exceptions:**

- i) Plaintiff's Own Default
 - ii) Act of God
 - iii) Consent of the Plaintiff
 - iv) Act of Third Party
 - v) Statutory Authority
-

ABSOLUTE LIABILITY

- **Case:** Rule laid down in M.C. Mehta v. Union of India (leakage of Oleum gas).

The Supreme Court of India took a bold decision holding that it was not bound to follow the 19th century Rule of English Law, and it could evolve a rule suitable to the social and economic conditions prevailing in India at the present day. It evolved the rule of 'Absolute Liability' as part of Indian Law in preference to the rule of Strict Liability. The new rule is not subject to any of the exceptions under the Rule laid down in Rylands Case.

AVIATION & LIABILITY

- ❑ When an Aircraft crashes and causes Personal Injury or Death, it is often difficult to determine the exact cause of the accident.
- ❑ Aircraft crash results in significant property damage, including the destruction of Aircraft, as well as bodily injury and loss of life.

DIFFICULT TO DETERMINE THE EXACT CAUSE OF ACCIDENT

□ When an Aircraft crashes and causes Personal Injury, or Death, it is often difficult to determine the exact cause of the accident.

➤ **Examples:**

- Was it Pilot Error?
- Did the Aircraft Malfunction?
- Was there Negligence on the Owner's part?
- How well was the Pilot trained?
- Was the Aircraft being flown in a way it wasn't intended to fly?
- Were the Crew and Passengers aware of how to act in an emergency?

Contd..

- ❑ A number of Airports, large and small, have had incidents ranging from minor slips and falls costing a few thousands in bodily injury awards to substantial damage to commercial aircraft with settlements ranging into the millions of dollars.
- ❑ Airport Operators Liability coverage is designed to respond to such incidents and protect the airport owner/operator from the associated costs of defence and claims settlement.

WHAT RISK EXPOSURES DO AIRPORT OWNERS/OPERATORS HAVE?

- ❑ An Airport has all the legal liability incurred resulting from bodily injury, property damage and personal injury arising out of the performance of their Statutory Duties and Functions regarding any related Aviation Operations like Maintenance and Provision of:
 - **Examples:**
 - ❑ Runways and other Airport Utilities (Taxiways, Aircraft Parking etc.)
 - ❑ Firefighting
 - ❑ Refueling Facilities
 - ❑ Hangers
 - ❑ Snow Clearing etc.

CON TD..

- ❑ Whether an International, Regional or Local Airport, the Airport Owner/Operator has a responsibility to carry Insurance Coverage appropriate to its operations. Whatever limit is ultimately determined, it should be remembered that while the possibility of a major loss may seem slight, it is nevertheless REAL.

18-Feb-20

AIRCRAFT FAILURE

- ❑ Aircraft Failure Causes can be broken into several categories:

Examples:

- Poor Design
 - Poor Manufacturing Practices
 - Poor Maintenance
- ❑ Any of the aforesaid factors may cause the failure of an aircraft part to operate, loosening of parts due to vibration, or lack of crashworthiness.

MANUFACTURER FAULT

- ❑ The Manufacturer of an Aircraft may be at fault in several different ways.
- ❑ However, for a Manufacturer to be liable, the craft must have a design defect or manufacturing defect. This can include:

Examples:

- The Manufacturer's failure to warn or inadequate warnings about known issues, or
- Incorrect Emergency Instructions, as well as
- Incorrectly manufactured or assembled parts or
- The inability of parts to respond as expected.

OPERATOR FAILURE

- ❑ To successfully sue for Operator Failure, the Operator must be proved negligent, or to have acted in a negligent manner. This can include:

Examples:

- Loss of Control
- Inadequate Training
- Misuse of Aircraft or Part of Aircraft
- Failure to react in a timely manner
- Decision to fly in dangerous weather etc.

OWNER FAILURE

- ❑ In some cases, it is the owner and not the Operator or Manufacturer who may be held responsible. An Owner may exercise negligence through:
- ❑ **Examples:**
 - Failure to repair damage to the Aircraft
 - Modifications or Alterations to the Aircraft
 - Failure of the Aircraft to be Inspected
 - Use despite known damage or danger
 - Exercising use of the Aircraft despite known inadequacies

TYPES OF DAMAGES

- Aviation Liability may be sought for damages to:
 - An Individual (or)
 - Property on an Aircraft (or)
 - Damage to Property caused by crashes (or) emergency landings.

ASSUMPTION OF RISK

- Assumption of Risk is a term referring to the victim clear understanding of the risk involved in partaking in an activity, such as in sky diving.

Example: A client chartered a Private Jet and was recommended to delay departure due to inclement weather, but insisted on taking the risk despite the recommendations, the client may not be able to successfully sue for injury or damages.
(Doctrine of Added Peril)

Note:

Non application of::

- (i) Volenti Non Fit Injuria
- (ii) Res Ipsa Loquitor

WHAT IS AIR CARRIER LIABILITY?

- The Rules and Regulations defines and harmonizes the obligations of community air carriers as regards the nature and limits of their liability in the event of accidents to Passengers.

INTRODUCTION TO AIR CARRIER LIABILITY

- ❑ Blossoming of Commercial Air Transport in 1920
- ❑ Governments began to inquire the ramifications of Aviation accidents.
- ❑ First International Conference was convened by France on Private Air Law in 1925 and primarily considered creation of a uniform system of Aviation Law.
- ❑ The Second International Conference on Private Air Law was held in WARSAW from 4-12 Oct, 1929.

WARSAW CONVENTION 1929

Introduction

- ❑ Warsaw Convention took place in Warsaw (Capital of Poland) on 12th Oct. 1929. **(Date of Convention)**
- ❑ It is the Universal or Multilateral Convention and signed by 190 countries. **(Universal Convention & Signatories)**
- ❑ Experts in the field of Aviation Law, from 31 Nations, created a legal framework that still binds international aviation today. **(Creation & Binding Effect of Legal Framework)**

Contd..

- ❑ The Warsaw Convention is an International Convention which regulates liability for international carriage of persons, luggage or goods performed by aircraft for reward. (**Regulates Liability**)
- ❑ Originally signed in 1929 in Warsaw, it was amended in 1955 at The Hague (Netherlands) and in 1975 in Montreal (Canada). (**Amendments**)
- ❑ The Convention has **TWO PRIMARY GOALS**:
 - i) To establish uniformity in the aviation industry with regard to “the procedure for dealing with claims arising out of international transportation and the substantive law applicable to such claims”,
as well as with regard to documentation such as Tickets and Way Bills.(**Uniformity in Procedure for Claims & Documentation**)

Contd..

ii. Limiting the Air Carriers potential liability in the event of accidents.

The liability limit was believed necessary to allow airlines to raise capital needed to expand operations and to provide a definite basis upon which their insurance rates could be calculated.

(Limitation on Liability)

APPLICABILITY OF THE WARSAW CONVENTION

- Generally, the Convention applies to Air Carriage between the territories of two High Contracting Parties to the Convention **(Appl: Two High Contracting Parties) (Ex: India and U.A.E.)**
- Warsaw Convention governs the shipments from Airport to Airport, and not beyond the Airport Area. **(Shipments-Airport to Airport Only)**
- Warsaw required Airway Bill made and signed by consignor and handed over in triplicate. Non-compliance leads to a liability limit (\$9.07lbs) for the airline. **(Liability of Airline-If no Airway Bill)**

PURPOSE OF WARSAW CONVENTION

- ❑ To determine the liability of Air Carriers in the case of an accident,
both in regards to Passengers, Baggage and Cargo.
- ❑ Liability in case of Accident, both in regards to Passengers,
Baggage
and Cargo.
- ❑ It mandates Carriers to issue Passenger Tickets.
- ❑ Requires Carriers to issue Baggage checks for Checked
Luggage.
- ❑ Creates a Limitation Period of 2 Years within which a claim
must be brought.

LIABILITY UNDER WARSAW CONVENTION

- ❑ For Death, wounding or other Bodily Injury of Passengers, the liability limit of the Carrier is 125,000 Francs. **(Death, Bodily Injury: 125000F)**
- ❑ For Checked Baggage and Goods is 250 Francs per Kilogram (unless the consignor had made a special declaration of value at the time the consignment was handed over to the carrier and had paid a supplementary sum as required. In this case the Carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor on delivery). **(Checked Baggage and Goods: 250 F per kg).**
- ❑ As regards objects which the Passenger takes charge himself, the liability of the carrier shall be limited to 5000 F per Passenger. **(Liability for Objects of Passenger: 5000 F/Passenger).**

CONTD

...

- ❑ No limit of liability in relation to Delay. A Carrier is liable for damage occasioned by delay in the Carriage by Air of passengers, baggage and goods. Jurisprudence evolved, such that the respective passenger and cargo limitations would apply in cases of delay. (**Liability for Delay**).
- ❑ **Unlimited Liability of the Carrier under TWO circumstances:**
 - i) Damage caused due to willful misconduct.
 - ii) Failure to issue a Passenger Ticket or Baggage Check.

Note:

- ❖ The Convention defines the Franc Currency as referring to the French Franc consisting of 65 ½ milligrams of gold, at a standard of millesimal fineness of 900.

Contd...

□ No Liability of the Carrier in the following cases:

- i) Carrier not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(Standard of Care taken)

- ii) Carrier not liable if it proves that care was taken by it or by its agents beyond doubt in handling of the aircraft or in navigation.

DEFENCE PLEAS OF THE CARRIER

- ❑ The Carrier's liability under the Warsaw Regime is neither truly strict nor absolute.
- ❑ This is, in fact, presumptive liability made slightly stringent by appropriate provisions under the Convention.

TYPES OF DEFENCES

□ **The Plea of Abundanti Cautela (Abundant Caution):** The Carrier is not liable if he proves that the damage that occurred was beyond his control to avert or obviate. Thus, if he proves that he and his agents have taken all necessary measures even in abundanti cautela to avoid the accident or that it was impossible for him or them to take such steps, he then absolves himself of his liability.

□ **Plea of Contributory Negligence: (Generally CN is not a defence):**

If the Carrier proves that the damage was caused by or contributed to by the negligence of the injured person, the court may, in accordance with the provisions of its own law, exonerate the Carrier wholly or partly from his liability.

Note: It is important to note the wording which apparently excludes the invocation of this defence in the event of death of the passenger.
(The Hague Protocol, 1955)

DEFENCE PLEAS OF THE CARRIER

Contd.

•
□ The Plan of Limitation: Under the Warsaw Convention “the right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived or from the date on which the carriage stopped.

Note: It is however, interesting to note that this stipulation of limitation is specific to actions for recovery of damages and would not prejudice other rights under the Contract e.g., the carrier’s claim in respect of carriage against a Passenger.

- **Plea of Jurisdiction:** The Carrier can plead lack of jurisdiction in his defence, if an action is not brought “either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business , or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination”.s

CASE ON AIR CARRIER LIABILITY (INJURY)

- ❑ **Case: Ypma v. Martinair (28th August 2003)**
- ❑ **Facts:** Passenger Ypma suffered injury, when another passenger, while trying to put hand baggage in the overhead storage bins, dropped a suitcase on the head, back of the neck and shoulders of Ypma. Ypma left the plane and sued Martinair for the suffered damages.

Contd...

□ Article 17 of Warsaw Convention 1929 states:

“The Carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking”

- The Court considers that the only relation between this event and the carriage by Martinair was formed by the circumstances that it took place on board of an aircraft of Martinair.

Contd..

- ❑ Considering the meaning, purpose the genesis of Article 17 of the Warsaw Convention, a casual connection needs to exist between the cause of the accident and the operation of the aircraft to establish an 'accident' as meant in Article 17 of the Convention.
- ❑ **The Court finds Martin Air is not liable for damages.**
- ❑ **Court Held: Article 17 of Warsaw Convention was not applied.**

CASE ON AIR CARRIER LIABILITY (LOSS OF BAGGAGE)

- ❑ **Case: Talamini v. Transavia, 8 Juni 2005**
- ❑ **Facts:** Passenger Talamini flew from The Netherlands to Tenerife and his checked suitcase did not arrive at Tenerife. The suitcase was damaged and the contents lost. Talamini claimed damages from Transavia (Dutch based low cost Airliner):
 - i) for replacement of his belongings,
 - ii) carriage per taxi and
 - iii) compensation for the spoiled holiday.

The theft of the suitcase took place after checking the luggage, i.e., during the carriage from Schiphol Airport (Amsterdam) to Tenerife (A Spanish Island). **Held: Application of Art. 22 (2) Warsaw Convention, the liability of Transavia is limited to 17 SDR per kilo.**

- ❑ **Held: Article 22 (2) of Warsaw Convention applied.**

CASE ON AIR CARRIER LIABILITY (DELAY)

Case: Touw c.s. v. Transavia, 18 December, 2001

Facts : A flight from Lissabon to Amsterdam had a delay of 19 Hours and claimed:

- i) reimbursement of costs of alternative flight,
- ii) compensation for the material and immaterial damages suffered as a result of the delay.

Contention by Transavia: Exclusion of liability under the General Conditions of Liability.

Held: **Transavia is liable**

Application: Article 23 of Warsaw Convention

‘Art.23 states: Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract which shall remain subject o the provisions of this Convention.

CASE ON AIR CARRIER LIABILITY (THE CONCORDE CRASH) (CREW)

Facts

On 25th July, 2000, in a widely publicized accident, an Air France Concorde, registered F-BTSC, Flight 4590 to New York, crashed shortly after take-off from Charles de Gaulle airport into a small hotel in the nearby village of Gonesse. The preliminary report from the French Accident Investigation Team established that during take-off the front right tyre of the **left main landing gear was destroyed**, very probably because it ran over a 43 cm twisted strip of metal on the runway. **The destruction of the tyre had catastrophic consequences, being followed by a punctured fuel tank with a major fuel leak**, ignition of the leaking fuel and an intense fire and two engine failures – contributing to the Concorde crashing less than a minute and a half after the destruction of the tyre.

Contd...

- ❑ The flight was carrying 100 Passengers (96 Germans, One Dutch, One Austrian and one American) and nine Crew.
- ❑ The relatives of the Crew of the Aircraft filed case for compensation.
- ❑ Held: The relatives of the crew of the aircraft are not covered by the Warsaw regime, but would probably receive compensation from the employer under worker's compensation arrangements.

MONTREAL CONVENTION 1999

Articles: 1-57

- ❑ General Provisions (Articles: 1-2)
- ❑ Documentation and Duties of the Parties relating to the Carriage of Passengers, Baggage and Cargo (Articles: 3-16)
- ❑ Liability of the Carrier and Extent of Compensation for Damage(17-37)
- ❑ Combined Carriage (Articles 38)
- ❑ Carriage by Air performed by a Person other than the Contracting Carrier (Articles 39-48)
- ❑ Other Provisions (Articles 49-52)
- ❑ Final Clauses (Articles 53-57)

REGIME OF LIABILITY MONTREAL CONVENTION: ART.17

□ Rule: Death and Injury of Passengers-Damage to Baggage (Art.17)

Carrier liable:

1. **Death or Bodily Injury:** The Carrier is liable for damages sustained in case of Death or Bodily Injury of a Passenger.

Condition: That the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

MONTREAL CONVENTION: ART. 17

Contd...

2. Checked Baggage: The **Carrier is liable** for damage sustained in

case of destruction or loss of, or of damage to, checked baggage.

Condition: That the event which caused the destruction etc., took place on board the aircraft or during any period within which the checked baggage was in the charge of the Carrier.

3. Admission by the Carrier: **Carrier is liable if it admits** the loss of checked baggage and Passenger can enforce it.

Exception: Carrier is not liable if and to the extent that the damage resulted from the **inherent defect quality or vice of the baggage.**

MONTREAL CONVENTION: ART. 18

□ **Rule: Damage to Cargo – Carrier Liable (Article 18)**

1. Carriage liable for damage to Cargo during the carriage by air.
2. Carrier liable for cargo but the cargo must be in charge of the Carrier.
3. Carrier liable for damage due to loading, delivery or transshipment
(subject to proof)

□ **Exception: Carrier Not Liable (if it proves that damage resulted from)**

- Inherent defect, Quality or Vice of that Cargo.
- Defective Packing of that Cargo performed by a person other than the Carrier or its servants or agents.
- An act of War or an Armed Conflict.
- An act of Public authority carried out in connection with the entry, exit or transit of the cargo.

Montreal Convention: Art. 19-20

- ❑ **Rule : Delay in the Carriage – Carrier is liable (Article 19)**
- ❑ **Exception: Carrier is not liable for damages occasioned by:**
 - i. If it proves that it and its servants took all measures that could reasonably be required to avoid the damage (or)
 - ii. that it was impossible for it or them to take such measures
 - iii. If it proves that the damage was caused or contributed to be the negligence or other wrongful act or omission of the person claiming compensation. (**Exoneration-20**)

CONTD...
ART. 21

MONTREAL CONVENTION:

❑ **Rule: Compensation in case of Death or Injury to Each Passengers (Art.21)**

1. Amount not exceeding 100000 SDR (SDR1 = US\$ 1.47108)

100000 SDR=US\$ 147108

147108 US\$=INR@48=Rs. 70,61,184-00

❑ **Exception:**

- Carrier will not be liable for damages arising under Art. 17 (1) to the extent that they exceed for each passenger 100000 SDR if the Carrier proves that:
- such damage was not due to the negligence or other wrongful act or omission of the Carrier or its Servants or Agents; or
- such damage was solely due to the negligence or other wrongful act or omission of a third party.

MONTREAL CONVENTION: ART. 22

- ❑ **Rule: Limits of Liability in Relation to Delay, Baggage and Cargo**
- ❑ Liability of Carrier towards Delay to each Passenger : 4150 SDR
- ❑ Liability of Carrier towards Baggage : 1000 SDR
destruction, Loss, Damage or delay to each Passenger
- ❑ Liability of Carrier towards Cargo : 75 SDR
destruction, Loss, Damage or Delay to each Passenger

JURISDICTION

WARSAW

CONVENTION: ART. 28

- ❑ The Convention created an additional 'Fifth' Jurisdiction to the four retained from the **Warsaw Convention**.

(Warsaw focused on 'Place of Carrier')

1. The Court of the Domicile of the Carrier
2. The Court of the Principal Place of Business of the Carrier
3. The Court where the Carrier has a place of business through which the contract was made
4. The Court at the place of Destination

CONTD

...

Montreal Convention-Art. 33

- Now action could be brought for the recovery of damages in the Court of the Passenger's home country if the Aircraft has a commercial presence in that country. The 'Fifth Jurisdiction' has been restricted to:
 1. The Principal and Permanent Residence of the Passenger.
 2. To or From which the Carrier operates services for the carriage of Passengers by air either on its own aircraft or on another carrier's aircraft pursuant to a commercial agreement; and
 3. Such Principal and Permanent Residence being a place in which that Carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has commercial agreement.

DIFFERENCES BETWEEN WARSAW AND MONTREAL CONVENTION

INDIA JOINS MONTREAL CONVENTION ON COMPENSATING AIR PASSENGERS

- ❑ India has recently acceded to the Montreal Convention.
- ❑ In order to incorporate the Convention's provisions into Indian Law, the Carriage by Air (Amendment) Act 2008 amending the Carriage by Air Act 1972 was enacted by Parliament in February 2009 and notified in March 2009.
- ❑ India has become the 91st Member of the Montreal Convention on Civil Aviation that imposes STRICT PENALTIES ON CARRIERS for the DEATH OF PASSENGERS due to negligence and fixes higher Insurance Premium towards air disasters.

Contd...

- ❑ The Indian Amendment Act 2009 covers the International Carriage of Passengers, Baggage or Cargo by Airlines.
- ❑ The Convention imposes a minimum liability of nearly \$150,000 (150000 @ Rs.48-00 = 72,00,000 Lakhs) for the death of a passenger during flight, unless the airline proves that such damage was due not to the negligence or other wrongful act or omission by the Carrier.
- ❑ To avoid additional damages, the Airline will also have to prove that the damage was solely due to the negligence or other wrongful act of a third party, the passengers or of the person claiming the compensation.

CONTD

...

- ❑ The Carrier is also liable for damages occasioned by the Delay in the carriage of Passengers, or Cargo.
- ❑ In case of Death or Injury of Passengers, the Carrier shall make advance payments without delay.
- ❑ The Montreal Convention 1999 is the first major revision of the provisions related to the Death, Injury of Air Passengers, or Loss or Damage to Cargo or Baggage since the Pact agreed at Warsaw Convention in 1929.

BIRD STRIKES AGAINST AIRCRAFT

– ISSUES OF LIABILITY

- ❑ A Bird strike is deemed to have occurred whenever a pilot reports a bird having impacted his aircraft;
- ❑ Aircraft Maintenance Personnel identify some damage to an aircraft which they can attribute to a bird strike;
- ❑ Ground Personnel report seeing an aircraft hit one or more birds in flight; or
- ❑ Bird remains, whether in full or part, are found on the airside pavement area or within 200 feet of a runway, unless another reason for the bird's death is identified.
- ❑ Reports in US state that since 1960, 400 aircraft have been destroyed.
- ❑ Bird strikes cost Civil Aviation over \$ 470 Million per year in the US.

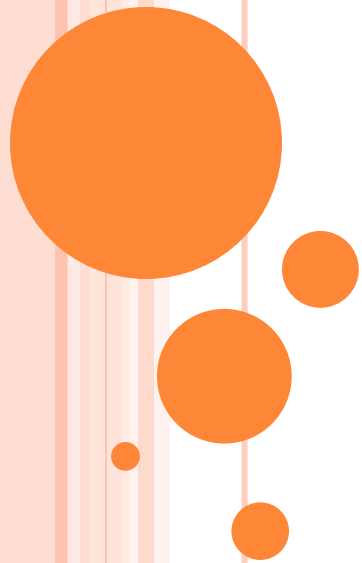
WHO IS RESPONSIBLE FOR PREVENTING BIRD STRIKES AGAINST AIRCRAFT? (ACCOUNTABILITY)

- ❑ The initial answer to the question lies in the element of control exercised in a particular jurisdiction in the vicinity of the site of the accident. The Airport is the key player in this equation,
- ❑ As would be an Air Traffic Control Authority, although to lesser extent particularly in instances of failure to warn aircraft of possible bird hazards.
- ❑ The State in whose territory the accident takes place should be called upon to answer whether it had a successful wildlife program in place.

CONTD

...

- However, in the ultimate analysis, the Airport Authorities should be held liable; they owe aircraft operators the common duty of care of ensuring that the latter's aircraft are afforded basic safety from bird hazards.
- Therefore, the onus of responsibility to avoid bird strikes depends very much on the airport authorities, as a few significant instance of adjudication show, which focus on exculpation of any airport that shows bird control systems in operation and trained staff to deal with the problem of wildlife hazards.



END SLIDE
THANK YOU