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Carrier's liability in air transport with particular reference to Iran

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**Carrier's Liability in Air Transport
with Particular Reference to Iran**

HAMID KAZEMI

Carrier's Liability in Air Transport with Particular Reference to Iran

PROEFSCHRIFT

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de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. P.F. van der Heijden,
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Finally, I offer my regards and blessings to all of those who supported me in any respect during the completion of the thesis.

Hamid Kazemi

Leiden, 2012

This manuscript is dedicated to:

My parents, Ahmad and Effat,

My wife, Akram Tayyebi,

My son Ali,

My brothers Hussein, Asghar and Reza,

For you, who are the perfect components in my equation of happiness

Preface

The author's interest in air carrier's liability, and the conflict between the *Shariah* and private international air law, took root in 1996 when he was completing his M.A. thesis on the role of international law in the investigation of air accidents. Two years preceding that, an air accident involving Aseman Airlines occurred in Iran. At that time, heated discussions took place between Islamic jurists and legal experts on the liability of the air carrier for the death and bodily injury suffered by the passengers. In the course of the court proceedings, it transpired that there was a conflict between the *Shariah* principles and those of private international air law. Whilst the *Shariah* prescribes the *Diyah* in the case of death or bodily injury, this differs from the principles of liability and compensation under private international air law. The critical question that emerged was whether the Warsaw-Hague rules should have priority over the *Shariah* when determining liability for passenger's death and bodily injury. No decisive unified opinion has hitherto been held on the matter. Indeed, diverse views have been proffered by the Iranian courts and legislative bodies.

Iran has just ratified and given effect to the Warsaw Convention 1929, The Hague Protocol 1955, and the Guadalajara Protocol 1961 for international flights, in 1975. According to the Specific Act of 1985 entitled 'Determining the Scope of Liability of Iranian Air Carriers on Domestic Flights' in air transport accidents of domestic flights, Iran applies the provisions of limited liability in the Warsaw Convention as amended at the Hague in 1955.

The Guardian Council of the Constitution, which consists of Islamic jurists, claimed that the *Shariah* regulations have priority over the rules of the Warsaw Convention. They should therefore prevail in cases of conflict of laws. However, this point of view may impede the attainment of uniform regulation of air carrier's liability.

Working for the legal bureau of the Civil Aviation Organization of Iran was an opportunity to be closely involved in and therewith learn about aspects of air carrier's liability. When the author decided to pursue a PhD in air law in 2005, he chose to work on the legal aspects of air carrier's liability for death and bodily injury. With this in mind, this thesis aims to investigate and compare the principles of liability in private international air law with those of the *Shariah*. In particular, it will critically study the relevant laws in two common law countries (England and the United States) and

two civil law countries (France and Germany) that have had significant influence on private international air law. These will be compared with the *Shariah* system which underlies Iranian law.

Since the liability principle for death or bodily injury in the *Shariah* may be at odds with those outlined in international rules, the principal aim of this thesis is to find a way forward that would help promote uniformity of international air carrier's liability. It will be argued that contrary to the views of the Guardian Council of the Constitution, in the event of a conflict of laws, it is possible to reconcile the *Shariah* principles of liability with the Warsaw-Montreal regime. Also, Iran may adopt the Montreal Convention 1999. Any probable conflict between the provisions of this Convention and the *Shariah* can be resolved through the application of a specific statute by the Parliament.

Table of Contents

Preface.....	ii
CHAPTER 1	
GENERAL INTRODUCTION.....	1
1.1 Introduction (Uniformity)	1
1.1.1 Possibilities	2
1.1.2 Challenges	5
1.1.2.1 Economic Conflicts.....	5
1.1.2.2 Different Legal Systems	6
1.2 Aims of the Thesis	10
1.3 Methodological Framework of the Research	11
CHAPTER 2	
LIABILITY IN DIFFERENT LEGAL SYSTEMS: A COMPARATIVE STUDY	14
2.1 Introduction.....	14
2.2 Common Law	15
2.2.1 General Principles of Liability	16
2.2.1.1 Tort.....	16
(i) Negligence	16
(ii) <i>Res Ipsa Loquitur</i>	20
2.2.1.2 Bailment	21
2.2.1.3 Contract.....	23
2.2.1.4 Contract of Carriage.....	24
(i) Common Carrier	24
(ii) Private Carrier	26
2.2.2 Liability in English Law	27
2.2.2.1 Tort liability	27
2.2.2.2 Contractual liability	27
2.2.2.3 English Law and International Liability	29
2.2.3 Liability in the United States.....	32
2.2.3.1 Tort liability	32
2.2.3.2 Contractual liability	34
2.2.3.3 The United States Law and International Liability.....	36

2.2.4 American Law and English Law: A Comparative Analysis	40
2.3 Civil Law	45
2.3.1 General Principles of Liability	46
2.3.1.1 Tort.....	46
2.3.1.2 Contract.....	47
2.3.2 Liability in French Law.....	48
2.3.2.1 Tort liability	48
2.3.2.2 Contractual Liability	51
(i) <i>Obligation de moyens</i>	53
(ii) <i>Obligation de résultat</i>	54
(iii) <i>Force majeure</i>	56
2.3.2.3 French Law and International Liability	58
2.3.3 Liability in German Law	59
2.3.3.1 Tort Liability.....	59
2.3.3.2 Contractual Liability	63
2.3.3.3 German Law and International Liability	65
2.3.4 French law and German law: A Comparative Analysis.....	66
2.4 An Analysis of the General Principles of Liability under the Two Legal Systems.....	68
2.4.1 Tort Liability	68
2.4.1.1 Liability Based on Fault or Negligence	69
2.4.1.2 Fault ‘Rebuttably Presumed’	71
2.4.1.3 Liability Based on Non–Fault (Strict or Absolute liability)	73
2.4.2 Contractual Liability	76
2.4.2.1 Similarities	77
2.4.2.2 Differences	79
2.4.3 Interaction between the Two Legal Systems and the International Regime.....	81
2.5 Concluding Remarks.....	85
CHAPTER 3	
LAWS AND REGULATIONS IN IRANIAN AIR TRANSPORTATION	88
3.1 Introduction.....	88
3.2 The <i>Shariah</i>	93
3.2.1 Definition of the <i>Shariah</i>	94

3.2.2 Islamic Jurisprudence	96
3.2.2.1 Islamic Sources	96
(i) The <i>Quran</i>	96
(ii) The <i>Sunnah</i> (Tradition)	97
(iii) <i>Ejmā</i> (Consensus of Opinion)	97
(iv) <i>Aql</i> (Judicial Reasoning).....	98
3.2.2.2 Principles of Jurisprudence (<i>osul-e-feqh</i>)	99
3.2.2.3 Classification of Jurisprudential Issues (<i>feqh</i>)	100
3.3 Iranian Law	101
3.3.1 The multiplicity of Islamic Legislatures	102
3.3.1.1 The Islamic Consultative Assembly (the Parliament)	103
3.3.1.2 The Leader (<i>velayat -e- faqih</i>)	105
3.3.1.3 The Guardian Council of the Constitution	107
3.3.2 Laws and Regulations	110
3.3.2.1 Laws Directly Adopted from the <i>Shariah</i>	111
(i) The Iranian Civil Code	111
(ii) The Islamic Criminal Code (ICC)	112
3.3.2.2 Laws Not directly adopted from the <i>Shariah</i>	114
(i) The Commercial Code	114
(ii) The Civil Liability Act 1960.....	115
3.4 Principles of Liability	117
3.4.1 <i>La Zarar</i> (The Principle of No Harm).....	119
3.4.2 Tort Liability	120
3.4.2.1 <i>Etlāf</i> (Destruction)	120
(i) <i>Mobāsherat</i> (The Direct Causation of Destruction).....	122
(ii) <i>Tasbib</i> (The Indirect Destruction)	123
3.4.2.2 Fault	125
3.4.3 Contractual liability.....	126
3.4.4 Carriage Contract	130
3.4.4.1 <i>Amanat</i> or <i>Wadiyah</i> (Bailment or Deposit)	130
(i) Exemption	132
(ii) Condition of Strict liability	133

3.4.4.2 <i>Ejāreh</i> (Hire).....	133
3.4.4.3 <i>Vekalat</i> (Agency)	135
3.4.4.4 Contract of Carriage as an Independent Contract	135
(i) Carrier Liability	137
(ii) Defenses	139
(iii) Contractual Conditions.....	140
3.4.5 <i>Diyah</i>	141
3.4.5.1 Classification of Act of Offender.....	142
3.4.5.2 The Nature of the <i>Diyah</i>	143
(i) The <i>Diyah</i> as a Punitive Damage	144
(ii) The <i>Diyah</i> as a Compensation.....	145
(iii) The <i>Diyah</i> as an Integrated Special Entity	146
(iv) The <i>Diyah</i> as a Hybrid Nature.....	147
3.4.5.3 <i>Diyah</i> and Liability	149
(i) The <i>Diyah</i> and Tort liability	149
(ii) The <i>Diyah</i> and Contractual Liability.....	150
3.4.5.4 The <i>Diyah</i> and Limited and Unlimited Liability	152
(i) The <i>Diyah</i> and Limited Liability.....	152
(ii) The <i>Diyah</i> and Unlimited Liability	154
3.4.5.5 <i>Āqele</i> (Defendant)	159
3.4.5.6 Claimant	160
3.5 Iranian law and International Liability.....	160
3.5.1 International Flights	161
3.5.2 Domestic Flights	162
3.5.2.1 Air Carrier Liability for Baggage, Goods and Delay.....	163
3.5.2.2 Air Carrier Liability for Passenger's Death or Bodily Injury: Iran's Dual System of Liability.....	163
3.6 Concluding Remarks	164
CHAPTER 4	
INTERNATIONAL AIR CARRIER'S LIABILITY: A COMPARATIVE STUDY	168
4.1 Introduction (From the Warsaw Convention to the Montreal Convention)	168
4.1.1 The Warsaw Convention 1929	168

4.1.2 Transitional Stages from the Warsaw Convention 1929 to the Montreal Convention 1999	169
4.1.3 The Montreal Convention 1999	173
4.2. A Comparative Analysis of the Warsaw-Montreal Regime with that of the ' <i>Shariah</i> '..	174
4.2.1 Principles of Liability	174
4.2.1.1 The Basis of Liability (The Nuanced Approach in the Conventions)	175
(i) Private International Air Law	178
(ii) The <i>Shariah</i>	191
4.2.1.2 The Defence of the Air Carrier	194
(i) Private International Air Law	194
(ii) The <i>Shariah</i>	198
4.2.1.3 Liability Limits	200
(i) Private International Air Law	200
(ii) The <i>Shariah</i>	202
4.2.1.4 Breaking the Liability Limits	206
(i) Private International Air Law	206
(ii) The <i>Shariah</i>	209
4.2.1.5 Contractual Conditions	211
(i) Private International Air Law	211
(ii) The <i>Shariah</i>	213
4.2.2 Terms	215
4.2.2.1 Claimants in Liability for Death or Bodily Injury	215
(i) Private International Air Law	215
(ii) The <i>Shariah</i>	217
4.2.2.2 The Definition of 'Accident'	220
(i) Private International Air Law	220
(ii) The <i>Shariah</i>	225
4.2.2.3 Operation of 'Embarking' and 'Disembarking'	227
(i) Private International Air Law	227
(ii) The <i>Shariah</i>	232
4.2.2.4 'Bodily Injury' and 'Mental Injury'	233
(i) Private International Air Law	233

(ii) The <i>Shariah</i>	238
4.2.2.5 Exclusivity of Remedy.....	241
(i) Private International Air Law	241
(ii) The <i>Shariah</i>	244
4.3 The Warsaw Convention and the <i>Shariah</i> : On a Collision Course?.....	245
4.3.1 The Aseman Airline Case	246
4.3.2 The Guardian Council of the Constitution's Interpretation of the Law related to Air Accidents_	248
4.3.3 A Critique of the Guardian Council's Interpretation	249
4.3.4 Reconciling the <i>Shariah</i> and the Warsaw-Hague Convention	250
4.4 Concluding Remarks.....	252
CHAPTER 5	
CONCLUSIONS AND RECOMMENDATIONS.....	258
5.1 Reconciling Principles from Various Jurisdictions.....	258
5.2 Common and Civil Law Principles of the International Regime Governing Air Carrier's Liability.....	260
5.3 Flexibility and Dynamism of the International Air Carrier Liability System.....	262
5.4 Impacts of the <i>Shariah</i> on Air Carrier's Liability in Iran	264
5.5 Reconciling Conflicts between the <i>Shariah</i> and International principles	266
5.6 Recommendations.....	268
Summary.....	271
Samenvatting.....	278
Legal Documents.....	285
Selected Bibliography	288
Internet and Web-Based Sources	296
Appendix A.....	297
Curriculum vitae.	298