

Cover Page



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Legal documents

TRATIES AND CONVENTIONS

Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929)

Hague Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 (1955)

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Appendix A

WHAT IS IN A NAME? (Note from Prof. Dr. P.C.C. Haanappel)

Liability regimes have received different names in different jurisdictions, and even within a single jurisdiction one author may use a name, term or expression that differs from another author.

The essence of this short note is to postulate that it is not the “name” that counts, but the liability regime as laid down in a law or treaty. This applies as well in general as in the case of the Warsaw 1929 / Montreal 1999 air carrier’s liability regime. In other words: look at the text, the words of the law / treaty rather than putting a “sticker”, a name on it. The latter approach may lead to confusion, as is perhaps best illustrated in air law in one of Bin Cheng’s articles, in (1981) VI Annals of Air and Space Law 3. *In casu*, what Bin Cheng (educated in the British legal system) calls absolute liability, Mircea Matte (educated in the Romanian and French legal systems, and not to be confused with his brother Nicolas) calls strict liability with respect to the Montreal Intercarrier Agreement 1966 (modifying the Warsaw Convention 1929 for traffic to/from/via the USA).

Common law is less “doctrinal” in nature than civil law. Judges and the laws they apply count more heavily than authors. In the literature what is “fault”, or to use a better term, “negligence”, is fairly clear, whether it needs to be proven by the plaintiff or disproved by the defendant. In the latter case, one can speak of a presumption of liability or a presumption of fault. In the case of the Warsaw Convention, it is probably best, on the basis of the words of the treaty itself, to speak of a presumption of liability which can be rebutted by the defendant by proving absence of negligence / fault.

Common law gets more “fuzzy” when it comes to absolute or strict liability. For most, absolute liability is a form of liability (for instance, for nuclear damage) where, once there is damage and causation, the defendant has no defenses at all (the opinion, for instance, of Mircea Matte). Strict liability then is no-fault liability where, nevertheless, the defendant has defenses available such as Act of God / fortuitous event, and own fault of the victim. But, where the defense of Act of God / fortuitous event is not available but the defense of own fault of the victim is, some (like Bin Cheng) speak of absolute liability. Again, nobody, it is submitted, is right or wrong: it is not the “word”, the expression that counts, but the actual liability regime as per treaty or law.

Curriculum vitae

Hamid Kazemi was born in Tehran, Iran in 1967. He studied Islamic law in the theological School in Tehran from 1983 to 1990. He studied law (LL.B) at the Faculty of Law of Tehran University and public international law (LL.M) at the Faculty of Law of Shahid Beheshti University in Tehran. His interest in air law, and the conflict between the *Shariah* and private international air law, took root in 1996 when he was completing his thesis on the role of international law in the investigation of air accidents. He obtained his LL.M degree in 1997.

Working for the legal bureau of the Civil Aviation Organization of Iran from 1994 to 2005 was an opportunity to be closely involved in and therewith learn about aspects of air law. When he 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.

Mr. Hamid Kazemi is now legal advisor and legal secretary of the Iranian Airlines Association.