



“BODILY INJURY”

- Phrase was introduced in the 1929 Warsaw Convention
- Drafters of both conventions rejected the proposal to specifically include mental injury
- However it was not expressly excluded either
- Result: judicial uncertainty

Montreal Convention Article 17

“The carrier is liable for damage sustained in case of death or **bodily injury** of a passenger upon condition only 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.”



CASE LAW – SOME PRELIMINARY POINTS

- When applying an international convention, judges should look to cases from all state party jurisdictions for guidance on interpretation, not just their own jurisdiction.
 - The more “Senior” the Court, the more persuasive its judgment e.g. UK and US Appeal and Supreme Courts, Court of Justice of the European Union (CJEU), French Cour de cassation, High Court of Australia
 - Therefore, a Convention case in a respected court in any part of the world will have global impact.
 - The wording of Warsaw and Montreal Article 17 is very similar, so for decades Warsaw case law was applied directly to cases governed by the Montreal Convention
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EASTERN AIRLINES V FLOYD (US SUPREME COURT, 1991)

- Flight from Miami to Bahamas, May 1983
 - All three engines failed. Crew announced that plane was to be ditched in the Atlantic
 - After a period of descent without power, engines restarted and plane landed safely
 - No physical injuries suffered. Group of passengers claimed for mental distress
 - Held that article 17 of the Warsaw Convention did not allow for recovery for purely mental injuries
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KING V BRISTOW HELICOPTERS, MORRIS V KLM (UK HOUSE OF LORDS, 2002)

- Two cases heard together due to similar legal issue
 - Ms Morris was sexually assaulted by a fellow passenger
 - Mr Bristow was in a helicopter that crash landed back onto an oil platform after a failed take off
 - Neither was physically injured. Ms Morris developed depression and Mr King developed PTSD and stress-induced peptic ulcer disease
 - Held: a mental injury with no physical cause or origin could not fall within the convention concept of "bodily injury" but recovery could be made for physical manifestations of a mental injury or situations where injury to the brain could be demonstrated
 - King was compensated, Morris was not
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DOE V ETIHAD (US COURT OF APPEALS FOR THE SIXTH CIRCUIT, 2017)

- Passenger pricked her finger on a discarded hypodermic needle in the seat-back pocket. She suffered no significant physical injury, but severe and prolonged anxiety while she waited over a year for the all-clear from blood tests
- The “accident” was the presence of a used syringe. The injury was a minor needle prick
- Court rejected the settled Warsaw Convention principle that no damages recoverable for psychiatric injury unless causally linked to the physical injury sustained in the accident
- Damages awarded.

*“The Montreal Convention is a **new treaty** that we interpret as a matter of first impression”*

*“The Warsaw Convention provided limitations of liability to protect fledgling airlines from litigious passengers; the Montreal Convention provides limitations of liability to **protect** (still litigious) **passengers** from the not-so-fledgling airlines.”*

Judge Danny Boggs

- Aircraft evacuated after an aborted takeoff
 - Passenger developed PTSD after being knocked to the ground by gusts of up to 65mph from the jet exhaust of the engine (not physically injured)
 - Austrian court referred the interpretation question to the CJEU
 - CJEU pointed (like Boggs) to the preamble of the Convention, which refers to "*the need for fair compensation based on the principle of reparation*".
 - Held that this required equal treatment of passengers who have suffered injuries, whether physical or mental, of the same gravity as a result of the same accident. A mental injury may be just as serious as a physical one. It would therefore be unjust to exclude mental injury. This reflects contemporary attitudes to mental health.
 - One caveat for award of damages – the mental condition must be medically diagnosed as one that will not resolve without treatment
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WHERE DOES THIS LEAVE US?

- *Doe* and *Laudamotion's* approach of treating Montreal as distinct from Warsaw has just been followed in Illinois in a consolidated series of cases against Aeromexico
 - There has long been an acceptance that it was unwise, and commercially unpalatable, to defend mental injury claims, especially if accompanied by any physical injury at all
 - Recent case law probably just realigns the law with the commercial and human factors that were already informing our approach to negotiation and settlement
 - But claimants likely to be braver about pursuing standalone psychological injury claims
 - Focus of these cases will likely shift to the extent and adequacy of the medical evidence required
 - Increasing medical and social recognition of the extent and impact of mental health conditions will likely mean higher awards
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