

The Contractual Liability of the Air Carrier in Jordanian Legislation and the International Conventions: The Modern Judicial Jurisprudence

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Abstract

The study deals with the contractual liability of the air carrier, particularly in terms of passenger and freight transport, in Jordanian legislation and international conventions. It analyses the relationship between error and the damage caused, and it clarifies the limits to the contractual liability of the air carrier mentioned in the Convention for the Unification of Certain Rules of International Carriage by Air commonly known as Montreal Convention of 1999. This Article stems from the General Assembly of the Jordanian Cassation Court's decision to apply the Montreal Convention of 1999 to the entire air transport industry, despite its limitation to Article 31, which specifically addresses cases of baggage defects or delays. However, in cases of loss and damage, it is not required to submit the objection stipulated in Article 26 of the Warsaw Convention. The study concludes with several outcomes and recommendations, the most important of which is the necessity of amending the Jordanian Civil Aviation Law to be in line with the Montreal Convention by adding new Articles regulating the contractual relationship between the air carrier and the passenger.

Introduction

The contractual liability of an air carrier is one of the most crucial issues in the air transport industry. It ensures that both passengers and air carriers are aware of their rights and obligations to each other.¹ The importance of the study lies in clarifying the state of availability of the air carrier's and its implications. At the same time, the failure to address this issue leads to ambiguity and weakness in the texts of the Montreal Convention of 1999 and the Warsaw Convention and its 1929

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¹ Hozan Abdullah, 'The Civil Liability of the Air Carrier for the Safety of Passengers, A Comparative Study' [2017] 1(3) TUJL <<https://www.iasj.net/iasj/Article/141625>> accessed 27 July 2021.

amendments. Thereupon, these Conventions do not clarify the nature and elements of the air carrier's contractual liability, the causal relationship between the error or accident and the damage, and the nature of the damage and compensation for psychological harm. Furthermore, they do not address the limits to the air carrier's contractual liability, the permissible extent of consent to violate these limits, and the practical importance of these limits.² The deficiency of these texts will be addressed by consulting the Montreal Convention of 1999 and provisions of the Warsaw Convention of 1929 and its amendments. Additionally, references will be made to the Jordanian Civil Aviation Law, Consumer Protection Instructions ("JCPI"), the Jordanian Civil Law ("JCL"), the Jordanian Trade Law ("JTL"), and the provisions of the Jordanian Cassation Court ("JCC"). These additional sources will be utilised to address certain issues that are not specifically mentioned in the conventions.³

This study aims to clarify the controversy surrounding the nature of the air carrier's liability, type of compensable error, application of compensation for psychological damage, delay in transportation, damages caused to hand luggage, and the role of the discretionary authority of the national judge in adjudicating the dispute between the passenger and the air carrier. It also looks at the maximum limits for compensation for death and bodily harm, determining the air carrier's liability in delays in the carriage of passengers and their luggage and damage to their luggage, and tightens the air carrier's liability.

The paper aims to answer several questions, including the liability of air carriers and the role of presumptive error as a component of air carrier liability. It will also discuss compensation for psychological harm, delays in the carriage of passengers and their luggage, and the nature of the air carrier's liability. Moreover, it will analyse whether the term "accident" meant to include any form of incident, or does it have to be tied to regular aviation risks.

The desired objective of the study is to address the shortcomings in some provisions of Jordanian Civil Aviation Law and the JTL to align with what is stated in the Montreal Convention of 1999 by adding new Articles to align with the

² The Unification of Certain Rules of International Carriage; Warsaw Convention 1929.

³ The Jordanian Civil Law (JCL) Act 1976; The Jordanian Trade Law (JTL) Act 1966; Jordanian Civil Aviation Law Act 2007; Jordanian Consumer Protection Instructions (JCPI) Act 2020, s 209.

amendments made to the conventions. However, the Montreal Convention did not modify or define the terms “accident” and “bodily injury,” which has resulted in significant ambiguity in interpretation. Furthermore, no limit of liability appears to be acceptable today, and special emphasis has been paid to consumer protection.

Methodology

A comparative approach will be adopted in this study due to the diversity of legislations. It will clarify the differences between these legislations and determine the strengths and weaknesses of these trends and how they are considered. Furthermore, the study also follows an analytical approach to analyse relevant legislative provisions related to the subject of this study to determine its contents, implications, and objectives.

The Elements of the Contractual Liability of the Air Carrier of Passenger and Freight Transport

The Montreal Convention 1999 states that air carriage is carried out according to a contract between the air carrier and the passenger, making it no different from other transport contracts except by the medium of transport, which is the aircraft. Therefore, the agreement has clearly defined the air carrier's liability for transporting passengers and their baggage as contractual and personal responsibility, considering the evidence related to the presumed error.⁴ Article 41 of the Jordanian Civil Aviation Act stipulates:

- [a.] The provisions of the Montreal Convention apply to persons, luggage and goods in commercial international air transport.
- b. The provisions of the Montreal Convention apply to persons, luggage and goods in commercial inland air transport, unless otherwise provided in this Act.
- c. The air carrier is not liable to the shipper for dumping the goods shipped during flight for reasons of safety of the aircraft, provided that the air carrier and its followers have taken all necessary measures to avoid damage.

⁴ Yahya Al-Banna, ‘The Impact of International Terrorism on the Liability of the Air Carrier’ (DPhil thesis, Alexandria University, 1993).

d. The air carrier shall not be responsible for removing any passenger from the aircraft who breaches the system or may pose a threat to the safety of the aircraft or its passengers.

e. The air carrier shall verify that the passengers meet the necessary documents required to enter or exit the Kingdom at the intended airport, and it shall bear the consequences in case of any failure to do so.

Moreover, Article 77(1) of the JTL mentions that passenger transport contracts, such as goods transport contracts, occur as soon as consent is obtained.⁵ Deciding the existence of this contract is at the discretion of the national judiciary; however, a decision of the JCC stated that “the liability of the air carrier to compensate for the death of passengers is a contractual liability arising from the contract of carriage represented by the travel ticket”.⁶

With regards to error, it states that it is a breach of a contractual obligation or a deviation in the conduct of the person bound by this obligation, which the ordinary individual does not come to in most cases.⁷ Additionally, the Montreal Convention of 1999 adopts the supposed error concept as evidence that can prove the contrary. For the air carrier to discharge its liability, it must prove that it has performed a duty of care necessary to complete the carriage.⁸

For this purpose, Article 17(1) of the same convention stipulates that the carrier shall be liable for damage arising in the event of a passenger’s death or bodily harm, provided that the accident which caused the death or harm occurred only on board the aircraft or during any operation of the operations of embarking or disembarking.⁹

⁵ The Jordanian Civil Law, art 41. The Jordanian Trade Law (JTL), art 77(1).

⁶ *Alia Royal Jordanian Airlines Corporation v. Salim Shukri Cass civ* [1986] The Jordanian Cassation Court (JCC) 391, [1986].

⁷ Adnan Al-Sarhan and Nouri Khater, *Explanation of Civil Law, Sources of Personal Rights Obligations Comparative Study* (11th edn, House of Culture for Publishing and Distribution, Jordan 2009) 307–301.

⁸ Ahmed Ghatasha, *The General Provisions and Air Carriage* (11th edn, Dar Al-Safa Publishing and Distribution, Jordan 2002) 168.

⁹ The Unification of Certain Rules of International Carriage, art 17(1).

Therefore, the air carrier must prove that it has performed the terms of the contract of carriage within the limits of the care required from a common carrier; in such a situation, the carrier must take the necessary precautions in selecting and monitoring the crew and the supervising staff. They must also follow up on the periodic inspection of the aircraft and any required updates. If they do not implement these steps, they will be liable towards passengers. In addition, the air carrier is responsible if the plane takes off in bad weather conditions that were previously announced in the weather forecast, and it had to be late to take off.¹⁰

I. Error in Delaying the Carriage of Passengers and Their Luggage

As mentioned in the travel ticket, the carrier shall carry the passengers and luggage to the specified destination by good transportation and along the agreed path.¹¹ This is reflected in Article 77(2) of the JTL, which states that the carrier must deliver the passenger safely to their destination. Within the agreed period, if an emergency occurs, the liability arising from the contract shall be denied by the carrier by establishing evidence of force majeure or fault occurred by the victim.¹²

It clarifies that the carrier's obligation to ensure the passenger's safety is an obligation to exert care. The carrier can be absolved from this liability by demonstrating that caution has been taken when implementing the contract. Therefore, there is no liability to the air carrier for the accident when transporting the passenger and their baggage from the air carrier's offices in the city centre to the airport or vice versa. Moreover, this liability does not include the period while the passenger is in the waiting area.¹³ Therefore, Article 17(1) of the Montreal Convention of 1999 stipulates that the carrier is responsible for damages arising from a passenger's death or bodily injury, given that the accident resulting in the death or injury occurred exclusively on board the aircraft or during the processes of embarking or disembarking.¹⁴

¹⁰ Talib Musa, *The Sky Law* (11th edn, Dar Al Thaqa Publishing Library, Jordan 1998)144–140.

¹¹ Akram Yamalki, *The Aviation Law a Comparative Study* (11th edn, Dar Al Thaqa Publishing Library, Jordan 1998) 121–118.

¹² The Jordanian Trade Law, art 77(2).

¹³ Elias Haddad, *Aviation Law* (11th edn, Syria, University Press, Damascus 2005) 83–80.

¹⁴ The Unification of Certain Rules of International Carriage, art 17(1).

This convention does not specify the meaning of “accident.” The most common explanation is that an accident is every sudden incident resulting from the process of air carriage and related to the use of the aircraft. Thus, the air carrier is not liable for the harm caused to a passenger due to another passenger’s assault on them. Furthermore, the incident of assault, even if it occurred during the air carriage process, should not be originally related to the process of using the aircraft. For example, the air carrier is responsible for compensating the damages caused to passengers due to the hijackers changing the path of the aircraft and landing at a destination other than the agreed destination.¹⁵

As a result, the air carrier is not accountable for the injury caused to a passenger by anything not initially linked to the process of air carriage and the use of the aircraft, even if it occurred during the air transport process. This confirms that the air carrier’s liability is contractually based on the presumed error; the air carrier is liable to pay passengers for losses incurred due to the hijackers altering the flight route and landing at a location other than the agreed-upon destination. In addition to the carrier’s liability for the carriage of passengers, they are also obligated to transport their baggage. Article 17(2) of the Montreal Convention of 1999 states that the carrier is liable for damage to checked baggage, including damage, loss, or harm, but only if such events occurred on board the aircraft or during any stage when the carrier had custody of the checked baggage. However, the carrier will not be held liable to the extent that the damage, loss, or harm was caused by a fundamental defect, quality, or material defect of the baggage. In the case of unchecked baggage, including personal baggage, the carrier is liable if the damage is due to its fault or the fault of its crew or agents.¹⁶

Additionally, the air carrier is liable for loss, detriment, or damage to checked baggage. This baggage is what the passenger’s hand over to the air carrier, for which they get a receipt, and this liability is based on the supposed evidence of error considered by the Convention. Hand baggage is in the passenger’s custody; thus, the air carrier is not liable for its loss or damage, and it is subject to the provisions of national law.¹⁷

¹⁵ Adly Khaled, *Air Carriage Contract* (11th edn, New University House, Egypt 2006) 74–71.

¹⁶ The Unification of Certain Rules of International Carriage, art 17(2).

¹⁷ Tharwat Al-Assiouty, *The Air Carrier Liability* (11th edn, the International Press, Egypt 1960) 288–286.

Accordingly, the JCC ruled that Article 35 of the Montreal Convention of 1999 applies, whereby the right to compensation is forfeited if a lawsuit is not filed within two years from the date of the aircraft's arrival at its destination, the scheduled arrival date, or the suspension of the transfer process. The JCC's jurisprudence has established that this time period constitutes a forfeiture of the right rather than a statute of limitations. This interpretation has been consistently upheld by the court in cases involving cassation rights lawsuits, as the Convention explicitly uses the term "forfeiture of right" rather than "prescription of right" for all forms of international air carriage. Regardless of whether the subject matter was the carriage of passengers, baggage, or cargo, on all claims arising from contracts of carriage against the air carrier, as mentioned earlier, adopting the idea of forfeiture of right results in the unification of rules globally due to the various laws related to the causes of endowment and suspension. Thereupon the competent court dealing with the subrogation lawsuit to verify on its own that the right of the policyholder to the compensation for which the insured company was dissolved has not passed the period stipulated in Article 35 of the Montreal Convention of 1999. This applies even if the air carrier, as the party responsible for the damage, did not raise it as a defence in the case or submit a request before delving into the details, in accordance with Article 109 of the Law of Civil Procedure. At the same time, if it is proven that this period has passed then the policyholder is not entitled to raise a liability lawsuit against the cause of the damage "air carrier"; thus, the subrogation lawsuit loses one of its conditions and is subject to rejection. In the previous cassation decision adopted by the Court of Appeal, the issue of submitting objections or complaints from the consignee to the carrier was discussed in relation to the application of Article 26 of the Warsaw Convention. It was determined that Article 31 of the Montreal Convention of 1999, which encompasses all rules of carriage by air, specifically limits complaints to cases of defective or delayed baggage or merchandise where delivery has taken place. However, it does not specify any objection terms in cases of losses and damages, as provided for in Article 26 of the Warsaw Convention. As a result, it is essential to refrain from addressing the issue of objection in the context of the damage to the entire goods in question in this lawsuit, as the provisions of Article 26 of the Warsaw Convention do not apply to the facts of this case. Furthermore, the Court of Appeal adopted a different approach in applying the Warsaw Convention to the circumstances of this lawsuit, considering the objection in the event of damage to

the goods as stipulated in Article 26 of the Warsaw Convention, contrary to the provisions of the Montreal Convention of 1999, which is the applicable framework for this lawsuit.¹⁸

Because one of the most important elements of air carriage is the speed and shortened time on the aircraft, the air carrier is obligated to carry out the air carriage process according to the period agreed upon in the travel ticket, and if they violate this obligation, they will be liable for this fault.¹⁹

In cases where the flight is later than the agreed time between the air carrier and the passenger, it may cause a passenger to miss an important event such as a profitable business deal, assigned duty, a surgery, a conference, or a sports match.²⁰ Article 19 of the Montreal Convention of 1999 stipulates that “the carrier is liable for damages arising from delays in the air carriage of passengers, baggage, or cargo; however, the carrier will not be liable for damage caused by delay if it proves that he and his crew and agents have taken all reasonable measures necessary to avoid the damage or that it was impossible for him or them to take such measures.”²¹

It can be noted that this Article did not specify an objective criterion by which we can determine what is meant by delay.²² While most court rulings have generally upheld the terms established by the air carrier in the air carriage contract, this is contingent upon non-compliance with the specified departure date and the absence of justifiable reasons for the unexpected delay. The air carrier is obligated to carry out the air carriage within a reasonable time without a specific agreement.²³ If there is an agreement on a specific time for implementing the air carriage process, the air carrier’s liability will be to achieve a result in line with this agreement, while

¹⁸ *Jordan International Insurance Company v. Alia Company - Royal Jordanian Airlines Cass civ* [2021] The Jordanian Cassation Court (JCC) 2028, [2021].

¹⁹ Khaled (n 15) 75–73.

²⁰ Abdel Fattah Murad, *Explanation of the New Egyptian Trade Law No. 17 Of 1999* (11th edn, Al Mezan Library, Egypt 2003) 707–704.

²¹ The Unification of Certain Rules of International Carriage, art 19.

²² Hafiza El-Sayed, *Aviation Law* (11th edn, Arab House of Legal Encyclopedias, Egypt 1989) 153–149.

²³ Muhammad Al-Areni and Jalal Muhammadin, *Aviation Law (Air Navigation and Air Carriage)* (11th edn, University Press, Egypt 1998) 407–404.

if no specific time is agreed upon, it is the conveyor's commitment to carry out the due diligence.²⁴

Subsequently, the JCC rendered its decision in Judgment No. 4586 of 2021, issued on November 29, 2021. The Court ruled that the settled jurisprudence mandates the application of the Montreal Convention of 1999 to all regulations pertaining to air carriage. It emphasised that Article 31 of the Convention specifically addresses objections related to luggage or cargo defects or delays. However, in cases of damage and loss, it is not required to submit the objection stipulated in Article 26 of the Warsaw Convention. Consequently, as a benefit from the provisions of Article 35 of the Convention, the right to compensation shall be forfeited if the lawsuit is not filed within two years from the date of the plane's arrival at its destination or the planned arrival date to its destination, or the date of suspension of the carriage process, and this period would be considered a period of forfeiture and not one of prescription. Furthermore, in its contested judgment, the Court of Appeal adopted the provisions and texts of the Montreal Convention of 1999 regarding the carrier's liability as stipulated in Article 18 of the Convention. It stipulated that Article 35 of the Convention remains applicable, regardless of whether the air carrier, as the responsible party for the damage, has raised it as a defence against the claim. Additionally, even if it is evident that the two-year period specified in Article 35 of the Convention has elapsed from the date of the aircraft's arrival at its destination, the scheduled arrival proposed to the destination, or the date on which the carriage process was suspended, the insured party is not entitled to initiate a lawsuit against the party responsible for the damage.²⁵

Consequently, the Montreal Convention of 1999 creates a separate liability regime for baggage, luggage, and cargo. The carrier airline is strictly generally liable for damage sustained resulting from the case of destruction, loss of, or damage to checked baggage. Correspondingly, in the case of unchecked baggage, the baggage liability regime is based on fault. For damage sustained in the event of destruction, loss of, or damage to the cargo, the Montreal Convention of 1999 accepts liability for delays in the carriage of passengers, baggage, luggage, and cargo based on freight due to fault with a reversed burden of proof.

²⁴ Khaled (n 15) 75–74.

²⁵ *Eastern Services Company v. Jordan International Insurance Company Cass civ* [2021] The Jordanian Cassation Court (JCC) 4586, [2021].

II. The Material, Physical, and Psychological Damages to Passengers and Their Luggage

The air carrier's liability does not arise from the mere occurrence of the error, but rather the harm must arise from that error. "Harm" is the infringement of a person's rights or legitimate interests, such as a plane crash leading to the injury or death of one of the passengers.²⁶ Moreover, since the Montreal Convention of 1999 has adopted the air carrier's contractual liability, compensation is only for foreseeable damage, not in case of unforeseen damage.²⁷

When the air carrier fails to fulfil its obligations to transport passengers and their luggage, it results in tangible damages. Consequently, the air carrier becomes liable for compensating these damages. Part of these material damages to passengers are damages to their luggage such as shortage, damage, or loss, provided that such luggage is in the carrier's custody and registered in the contract of carriage.²⁸

However, Article 17(2) of the Montreal Convention of 1999 stipulates that unless otherwise stated, the term "baggage" in this convention means both checked baggage and unchecked baggage. The carrier should be liable for damage arising in the event of damage, loss, or defect in checked baggage, provided that the event

²⁶ Murad (n 20) 708–702.

²⁷ Al-Sarhan and Khater (n 7) 315–313.

²⁸ *International Airlines, United Arab Emirates v. Mohammed Nnaji Cass civ* [2003] The Jordanian Cassation Court (JCC) 3773, [2004]; "The decision stated that, it is benefited from the text of Article 79(2) of the court cassation No. 12 Of 1966, and its amendments, and Article 122(A) of Civil Aviation Law No. 50 of 1985, that the Warsaw Convention of 1929 and its amendments apply to the contract of air carriage which is the subject of lawsuit, it also benefits from Article 18(1) of the Warsaw Convention of 1929, which defines the liability of the carrier for damage that arises in the event of luggage spoilage, loss or damage registered in the contract of carriage, and Article 23, which considers every provision intended to exempt the carrier from liability as null, and Article 26, which relates to the person authorised to receive luggage or merchandise, and what he must do to object to the condition of the baggage/merchandise or damage on the date on which the baggage or merchandise were placed in his custody, and Article 29 which provides for the forfeiture of the right to compensation if the lawsuit is not filed within two years from the date of the aircraft's arrival at its destination, the passenger's right to claim compensation for his lost baggage does not depend on filing an objection or complaint stipulated in Article 26 related to the merchandise or luggage that has been delivered in defective or damaged condition, and his claim remains applicable for two years from the date the aircraft arrives at its destination." *Air Algeria company v. Oman Insurance Company Cass civ* [2006] The Jordanian Cassation Court (JCC) 1816, [2007].

causing the damage, loss, or defect occurred solely onboard the aircraft or during any period during which the checked baggage was in the custody of the carrier. Additionally, if the damage is caused by a quality or fundamental defect of the baggage, the carrier will not be liable. In the case of unchecked baggage, including personal baggage, the carrier is liable if the damage was caused by them. If the carrier acknowledges the loss of the checked baggage, or if the checked baggage has not arrived within twenty-one days from its planned arrival, the passenger is entitled to take advantage of the rights arising from the contract of carriage against the carrier.²⁹

Still, Article 17 of the Jordanian Consumer Protection Instructions (“JCPI”) Part 209 of 2020 states that the air carrier must inform the passengers of their rights by displaying a sign at the boarding gate, its official website, and sales offices that includes the phrase: “if you are denied boarding or if your flight is cancelled or delayed, ask the boarding desk about your rights.” Another informative signboard shall also be displayed in the baggage receiving area, related to baggage rights. Therefore, an air carrier that prevents passengers from boarding an aircraft or cancels or delays a flight for at least two hours must notify passengers by any written means, including electronic means, of their rights. Additionally, the air carrier shall provide alternative means of informing blind and visually impaired passengers of their rights under recognised international standards.³⁰

Also, part of the material damages to the passengers are damages resulting from the delay in transporting them and their baggage. Therefore, it is not enough for an error due to be due to delay. Rather, it must result in damage to the passengers and their baggage. However, the Montreal Convention of 1999 does not specify this type of damage. Therefore, such damage is subject to the discretion of the national judge. Consequently, the air carrier informs the passenger in every possible way before the date of the flight or at any time before the passenger receives the boarding pass with the actual air carrier’s identity. The airport operator decides on an appropriate contingency plan which facilitates the coordination between airport operations and airport users in possible instances of flight

²⁹ Montreal Convention of 1999, art 17.

³⁰ The Jordanian Consumer Protection Instructions (JCPI) (Part 209) Act 2020, s 17.

cancellations and delays which may result in large numbers of passengers being stranded at these airports.³¹

Hence, Article 19 of the Montreal Convention of 1999 states that the carrier shall be liable for damage arising from the delayed carriage of passengers, baggage, or cargo by air. However, the carrier shall not be liable for damage caused by delay if it is proven that all reasonable measures necessary to avoid the damage have been taken or that it was impossible to implement such measures.³²

This Article is in line with what is stated in Article 77(2) of the JTL, which is that “the carrier is obligated to deliver the passenger safely to the designated destination and within the agreed period, and in case of emergency, the liability arising from the contract shall be excluded from the carrier by proof of evidence of force majeure or the fault of the aggrieved”.³³

As a result, the carrier is liable for any damage caused by a delay in carrying checked luggage on board the aircraft or when the checked baggage was in the carrier’s possession. Nonetheless, the carrier is not responsible for harm caused by delay if it and its employees took all reasonable precautions to avoid the damage. Additionally, the air carrier is liable for damages resulting from the passengers’ death or bodily harm. Such damages occur onboard the aircraft or during boarding and disembarking operations, and the passenger does not cause these damages. For example, the suicide of a passenger on the plane, and whether the death was caused by the weak health of the passenger, as well as physical damage to the passenger as a result of an assault by another passenger, are excluded from the liability of the carrier. Thus, this is where Article 17(1) of the Montreal Convention of 1999 becomes relevant and protects the rights of passengers.³⁴

Since the phrase, any other bodily harm contained in the text includes all kinds of harm that may befall the traveller, whether physical or psychological, the

³¹ El-Sayed (n 22) 155–151.

³² The Unification of Certain Rules of International Carriage, art 19.

³³ The Jordanian Trade Law, art 77(2). The Warsaw Convention Act 1929, art 19.

³⁴ Ghatasha (n 8) 171–169.

correct interpretation is limited to physical harm without psychological harm.³⁵ It has been agreed internationally that compensation for psychological harm is not permissible unless it is accompanied by bodily harm.³⁶ However, some US court rulings have adopted a broad interpretation of psychological harm and have allowed compensation even if it is not accompanied by any bodily harm.

Consequently, an air carrier is liable for damages resulting from passengers' death or bodily harm, provided such damages occur onboard the aircraft. It is also important that the passenger does not cause these damages, as clarified above with the example of a passenger suicide. However, the Montreal Convention of 1999 did not change or clarify the words "accident" and "bodily injury," which has caused considerable interpretative difficulties. Of course, one can always hope that the courts will solve the problem in the future. Some argue that an aggrieved party may file two kinds of lawsuits: one, according to the convention related to bodily harm, and the other, according to national laws, for psychological and moral harms.³⁷

For this purpose, a ruling issued by the JCC referred to the texts of Articles 79(2) and 277(2) of the JCC, Articles 70 and 73 of the Civil Aviation Law, and Articles 17 and 20 of the Warsaw Convention. It stated that although the liability of the air carrier for the safety of the passenger in carriage accidents and its risk is assumed, this liability lapses if the harm is caused by force majeure. The carrier is also exempted from liability if they implement necessary precautions to avoid damage or if they cannot implement them. Moreover, since the evidence presented in the lawsuit proved to the trial court that the deceased child was traveling with his father, "the first distinguished" for treatment without the knowledge of the carrier, and this was also proven by technical evidence that the death on the plane resulted from the final cessation of the function of the kidneys, which cannot be expected in carrier conditions. In addition, the flight crew did not hesitate to take all possible measures to help the child on the plane since the symptoms appeared on him during the flight, including the assistance of a pediatrician among the

³⁵ Carolina Bani Abd al-Rahman, 'Air Carrier's Liability for Delays in Carriage Cargo: A Comparative Study' (Master Thesis, Yarmouk University 2016).

³⁶ Khaled (n 15) 77-75.

³⁷ Alaa Al-Din Al-Momani, 'Compensation for Harms Arising from Air Carriage Comparative Study' (Master Thesis, Al Al-Bayt University 2005).

passengers, while providing possible medical assistance and providing the patient with oxygen. Therefore, based on the preceding, the reasons for the exemption from liability are available to the carrier on the basis that the death had nothing to do with the conditions of air carriage, that it was caused by an unexpected force majeure on the part of the carrier, and that the carrier did not fail to take the necessary precautions to ward off or prevent it.³⁸

Another ruling of JCC stated the damage to the human body is graded in severity and amount, from minor to serious injuries, to disabilities that disable movement and senses partially and then completely, and the maximum harm and damage to the human body: death.³⁹ Thereupon, an air carrier's liability lapses if the harm is caused by force majeure on the carrier's part. Moreover, the carrier is also exempted from liability if the necessary precautions to avoid damage are implemented.

III. The Causal Relation Between Error and Harm

If the air carrier committed a fault resulting in harm, this is not sufficient to prove the responsibility of the air carrier; rather, this fault must be the cause of the harm.⁴⁰ Therefore, it is noted that the Montreal Convention of 1999 does not refer to the basis of the causal relationship between the carrier's fault and the harm. Instead, it left this matter to the provisions of national laws.

The fault must be the cause of all harm. For example, in an accident during the process of air carriage that slightly injured a passenger who demanded compensation for the injuries and permanent disability suffered by him, there must be a relationship in causation between the fault of the air carrier and the occurrence of the accident. So that if it turns out that the accident was not the result of the carrier's fault but rather due to an external cause such as a storm or because of the

³⁸ *Farouk Muhammad v. Royal Jordanian - Alia Corporation Royal Jordanian Airlines Cass civ* [1987] The Jordanian Cassation Court (JCC) 484, [1987].

³⁹ *Alia Royal Jordanian Airlines Corporation v. Salim Shukri Cass civ* [1986] The Jordanian Cassation Court (JCC) 391, [1986].

⁴⁰ *Al-Sarhan and Khater* (n 7) 316–311.

action of the aggrieved, the liability does not fall on the air carrier as a result of these damages to the passenger.⁴¹

Thereupon, a ruling issued by the JCC stated that it is an established rule for the Court of First Instance's jurisdiction to be subject to the supervision of the cassation court in legal matters, particularly when determining whether an act on which the request for compensation is based constitutes an error or a denial of the given description. However, the extraction of the error that entails liability and its attribution and causal relationship with the damage is within the limits of the discretionary authority of the trial court, without the supervision of the court of cassation over it, if its conclusion is justified and derived from the elements leading to it and the evidence presented in the case.⁴²

Accordingly, the mere occurrence of an accident does not give rise to a presumption of carelessness on the carrier's side; the passenger claiming loss or damage must demonstrate the claimed carelessness in line with the established criteria of proof.

The Consequential Legal Effects on the Contractual Liability of the Air Carrier

If the elements of the air carrier's liability are met, and the air carrier is unable to defend against such liability, it will result in their responsibility towards the passenger for the damages incurred. These damages encompass cases of death, bodily injury, and carriage delays. Moreover, regarding the Montreal Convention of 1999, it will be observed that it has set maximum limits on the air carrier's liability to compensate for the damages that arise from the air carriage process; this is to encourage economic activity in the air carriage industry.⁴³

⁴¹ Al-Momani (n 37).

⁴² *United Insurance Company v. Bassem Ahmed Cass civ* [2003] The Jordanian Cassation Court (JCC) 2503, [2003].

⁴³ Al-Sarhan and Khater (n 7) 316–312.

I. The Compensation in the Event of the Death or Injury of a Passenger

In the event of contractual liability of the air carrier, compensation awarded shall be for expected damages. However, if the damage results from fraud committed by the air carrier or a gross error, the compensation shall be for all expected and unexpected damages.⁴⁴

Thereupon, the ruling of the JCC stated that if the relationship between the plaintiff and the defendants is contractual, then a breach of any contractual obligation gives rise to contractual liability, the extent of which is determined by Article 363 of the Civil Law by compensation for damage already caused when it takes place. This liability shall not be judged by compensation for lost profits.⁴⁵ Additionally, by considering the process of air carriage that may lead to serious harm, such as death or bodily harm, the air carrier is obligated to compensate the passengers for such harm arising during the air carriage process.⁴⁶

Article 21 of the Montreal Convention of 1999 ruled that concerning the damages stipulated in Paragraph 1 of Article 17, whose value does not exceed 100,000 of the special drawing rights unit per passenger, the carrier may not deny or limit its liability. However, for the damages whose value exceeds 100,000 of the special drawing rights unit per passenger, the carrier shall not be liable if it is proven that the damage was not caused by the negligence, error, or omission of the carrier, his crew, or agents, or the damages arose solely due to negligence, error, or omission of others.⁴⁷

⁴⁴ The Jordanian Civil Law (JCL) Act 1976, art 263 states that if the guarantee is not estimated in law or the contract, the court must estimate if it is equal to the actual damage done. Furthermore, s 358(2) of the same law stipulates that, in all cases, the debtor shall remain liable for any fraud or gross error committed by him.

⁴⁵ *Saed Abdul Majeed v. Lucien Maral Cass civ* [2009] The Jordanian Cassation Court (JCC) 1180, [2009]; *Basel Burgan Company v. Sadouf Fouad Cass civ* [2008] The Jordanian Cassation Court (JCC) 2645, [2009].

⁴⁶ Alaa Hassanein, 'The Air Traffic Controller's Liability for Air Traffic Safety: A statistical study on the causes of aircraft accidents in the world and the percentage of air traffic control errors in it,' [2020] (74) JLERA<https://mjle.journals.ekb.eg/Article_156197.html> accessed 18 Nov 2021.

⁴⁷ The Unification of Certain Rules of International Carriage, art 21.

Determining compensation for these damages is of economic importance. This is because the air carrier may incur huge financial losses that they may be unable to pay, leading them to bankruptcy. Also, given that the plane is carrying large numbers of passengers, in the event of a plane crash, the compensation incurred by the air carrier would be enormous. Therefore, the determination of compensation for such damages is in the interests of the air carrier and the passengers as they can know their rights.⁴⁸

Consequently, Article 23 of the Montreal Convention of 1999 states that amounts shown in the form of special drawing rights units in this convention refer to the special drawing rights unit defined by the International Monetary Fund. Such sums shall be converted into national currencies upon litigation by the value of those currencies denominated in special drawing rights units on the day of the judgment. The value of the national currency of the state party, that is, a member of the IMF, is calculated in terms of special drawing rights based on the evaluation method applied by the IMF about its transactions and operations in force on the day of the verdict. Accordingly, the national currency value is calculated in special drawing units for a party state, not a member of the IMF, by the method established by that state.

States that are not members of the IMF and whose laws do not allow the application of the provisions in Paragraph I of this Article have the option to declare, upon ratification, accession, or subsequently, that the carrier's liability specified in Article 21 shall be capped at 1,500,000 monetary units per passenger when legal proceedings take place within their jurisdiction. This amount can be converted into the applicable national currency using rounded figures. The respective state's law converts this amount into the national currency. Therefore, the calculation mentioned in the last sentence of Paragraph I of this Article and the method of transfer mentioned in Paragraph II of this Article shall be made in such a way as to reflect, as far as possible, the national currency of the state party, for the same actual value of the amount mentioned in Articles 21 and 22. This is what

⁴⁸ Yassin El-Shazly, 'The Theory of the Inappropriate Court and its Impact on International Jurisdiction in Air Carriage Disputes: A Comparative Study' [2020] (71) JLERA<https://mjle.journals.ekb.eg/Article_156061.html> accessed 19 Nov 2021.

results from the application of the first three sentences of Paragraph I of this Article.⁴⁹

Hence, the State Parties shall inform the Depositary Party of the method of calculation by Paragraph I of this Article or the result of the transfer provided for in Paragraph II of this Article. This is when the instruments of ratification, acceptance, approval, or accession to this Convention are deposited and when any change is made in the method or results of the calculation. Therefore, the presiding judge may order compensation in the form of a salary, provided that the total payment does not exceed the maximum limit for compensation. The Warsaw Convention emphasized this so that the salary does not circumvent the specific liability provisions.⁵⁰

Subsequently, if maximum compensation is determined, this amount does not include the expenses of the liability, lawsuit, attorneys' fees, or any other related expenses. However, the court may rule that those expenses and amounts, based on the provisions of its internal law, may be added to the maximum compensation.⁵¹

Consequently, Article 22(6) of the Montreal Convention of 1999 states that the limits outlined in Article 21 and in this Article shall not prevent the Court from ruling, in addition to its law, on an amount equal to all or some of the costs of the lawsuit and other litigation expenses incurred by the plaintiff, including interest. However, this judgment's provision shall not apply if the amount of damages awarded, excluding the costs of the lawsuit and other litigation expenses, does not exceed the amount provided by the carrier in writing to the plaintiff within six months from the date of the event that caused the damage or before the lawsuit was filed, if it was filed at a later date than that period.⁵²

⁴⁹ The Unification of Certain Rules of International Carriage, art 23.

⁵⁰ Alaa Mohammed and Zainab Hashim, 'The Commitment to Ensure the Safety of the Passenger in the Contract of Air Transport: A Comparative Study [2019] 14(32) JBS<<https://iasj.net/iasj/download/549960e1da8c5b72>> accessed 23 Nov 2021.

⁵¹ Hani Dowidar, *'Maritime and Air Carriage'* (11th edn, Al-Halabi Publications for Rights, Lebanon 2008) 414–411.

⁵² The Unification of Certain Rules of International Carriage, art 22(6).

Thus, the passenger and the air carrier may agree to exacerbate the air carrier's liability by setting a maximum limit for compensation beyond what is specified in the convention, where this agreement must exist. Accordingly, the insurance concluded by the air carrier in favour of passengers as an amount exceeding the maximum compensation is not considered an agreement to raise the maximum compensation.⁵³

Unquestionably, the uniform responsibility of air carriers for passengers and property appears to be evolving along reasonable lines, with state legislation facilitating further development of uniformity. In addition, national law can enhance consistency in air-carrier liability further.

II. The Limitations of the Contractual Liability of an Air Carrier for Delay and Luggage

The international legislator has set maximum limits on the liability of the air carrier to compensate for delays and damage to passenger luggage. This determination considers the interests of the air carrier and the interests of the passengers since these international conventions sought to find a balance between the two parties, where the air carrier may waive this protection and pay amounts higher than the limits stipulated in these conventions.⁵⁴

Article 23(1) of the Montreal Convention of 1999 states that the amounts shown in this convention refer to the special drawing rights unit defined by the IMF. Accordingly, such sums shall be converted into national currencies upon litigation by the value of those currencies denominated in special drawing rights units on the day of the verdict. For a party that is not a member of the IMF, the value of the national currency is computed in special drawing units according to the procedure set by that State. States that are not members of the International Monetary Fund and whose laws prohibit the application of the provisions of

⁵³ Mohamed Al Shikhi, 'The Extent of the Air Carrier's Commitment to Ensuring the Passenger's Safety and His Liability for it: A Comparative Study Between Algerian Law and the Warsaw Convention of 1929 and the Montreal Convention' [2017] (4) AJMCL<<https://www.asjp.cerist.dz/en/Article/83284>> accessed 29 Nov 2021.

⁵⁴ Mahmoud Abu Shawar, 'The Cases of Air Carrier Exemption from Liability According to the Montreal Convention and The Jordanian Legislations' (Master Thesis, Middle East University 2013).

Paragraph 1 of this Article may declare, upon ratification or accession, or at any time after that, that the carrier's liability in respect of Paragraph 1 of Article 22, and the amount of 15,000 monetary units per passenger about Paragraph 2 of Article 22, and in the amount of 250 monetary units per passenger about Paragraph 3 of Article 22, is 62,500 monetary units. Consequently, the parties shall inform the depositary party of the calculation method by Paragraph I. This is when the instrument of ratification, acceptance, approval, or accession to this convention is deposited, and any change is made in the method or results of the calculation.⁵⁵

Also, Article 19 of the JCPI Part 209 of 2020 stated that the air carrier cannot be exempt from liability in whole or in part under these instructions. Any agreement to exempt the contracting air carrier or operator from liability under these instructions shall be null and void. Furthermore, the contracting air carrier or operator, concerning air carriage offered or sold in the Kingdom, shall inform the passengers by any written or electronic means, of two key aspects: the upper limit of liability of the air carrier applicable to a particular flight in respect of death or injury, if any, and the maximum liability of the air carrier applicable to a particular flight in respect of baggage defect, loss or damage. Additionally, the carrier may require a passenger to disclose the value of baggage that exceeds its maximum liability. Hence, the air carrier's liability extends to damages resulting from flight delay, change of departure time, cancellation, refusal of boarding, or downgrading seat category. The passenger has the right to submit to the air carrier a special statement showing the value of the baggage before the time of travel.⁵⁶

Accordingly, JCC No. 4586 of 2021, issued on 29th November 2021, stated that since it has been proven that the shipment was destroyed due to non-observance of the principles of transporting goods and medicines as stated in the air waybill, there is no need to address the objection raised by the observers in these reasons. Additionally, Article 41(a) of the Civil Aviation Law allows for applying the provisions of the Montreal Convention of 1999 to persons, baggage, and cargo

⁵⁵ The Unification of Certain Rules of International Carriage, art 23.

⁵⁶ The Jordanian Consumer Protection Instructions (JCPI), s 19.

in air carriage, making it the primary governing framework for air carriage contracts.⁵⁷

To conclude, regarding the aspects described in this article, the Convention marks a substantial advancement in a process that must never be considered complete. No legal code can ever be considered flawless or comprehensive; the most that can be anticipated is a functional model that can be refined occasionally.

Conclusion

Admittedly, the liability of the air carrier is a contractual liability that is determined according to the travel ticket and is based on a presumed error that can be proven reversible. The liability of the air carrier is based on three elements: fault, damage, and the causal relationship between fault and damage. Furthermore, the air carrier is not liable for damage to hand baggage since this baggage is not under their custody, but the custody of the passenger. The air carrier is liable for foreseeable damage and not for unexpected damage unless it results in fraud or serious error.

Therefore, determining the compensation owed by the air carrier would help reduce hesitancy in carrying passengers. This, in turn, would encourage the air carrier to continue operating. It should be noted that the maximum compensation ruling does not cover expenses related to the liability lawsuit, attorney's fees, or any other fees and expenses associated with the legal proceedings. Moreover, the court may determine these expenses and amounts in accordance with the provisions of its internal law. It is also permissible for the

⁵⁷ *Eastern Services Company v. Jordan International Insurance Company Cass civ* [2021] The Jordanian Cassation Court (JCC) 4586, [2021]. Also It was stated in *International Airlines, United Arab Emirates v. Mohammed Nnaji Cass civ* [2003] JCC 3773, [2004] that benefits from Article 18(1) of the Warsaw Convention of 1929 define the liability of the carrier for damage that arises in the event of luggage spoilage, loss or damage registered in the contract of carriage, and Article 23, which considers every provision intended to exempt the carrier from liability as null, and Article 26, which relates to the person authorised to receive luggage or merchandise, and what he must do to object to the condition of the baggage/merchandise or damage on the date on which the baggage or merchandise were placed in his custody, and Article 29 which provides for the forfeiture of the right to compensation if the lawsuit is not filed within two years from the date of the aircraft's arrival at its destination, the passenger's right to claim compensation for his lost baggage does not depend on filing an objection or complaint stipulated in Article 26 related to the merchandise or luggage that has been delivered in defective or damaged condition, and his claim remains applicable for two years from the date the aircraft arrives at its destination.

passenger and the air carrier to mutually agree to limit the liability of the air carrier, allowing the air carrier to waive off this liability as much as possible.

Finally, the key principles of the Montreal Convention of 1999 and Jordan's national legislation controlling air carrier liability will help speed up the settlement of disputes over the carrier's obligation to carry persons, baggage, and cargo by air. However, it is unfortunate that the Montreal Convention of 1999 did not modify or define the terms "accident" and "bodily injury," which has resulted in significant ambiguity in interpretation. The lack of an answer to whether the air carrier is accountable for incidents that are not inherent dangers of air travel implies that difficulties will persist under the new Convention.