Warsaw Convention - Limited Liability - Air Waybill Requirements

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Recommended Citation
https://scholar.smu.edu/jalc/vol36/iss4/7

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Warsaw Convention—Limited Liability—
Air Waybill Requirements

On 10 May 1962, a package containing plaintiffs' jewelry was delivered to defendant, Pan American Airways, Inc., for transportation from New York to Sussex, England. Under a contract of carriage contained in an air waybill, the package was transported to the carrier's office in London, where it was stolen by one of the employees of the carrier. Plaintiffs entered a claim in the amount of £1194 13s. 8d. (approximately $3350) for loss of the jewelry. Defendants denied liability, but further contended that, even if liability existed, it would be limited to £19 2s. 10d. (approximately $53) because of Article 22 of the Warsaw Convention, a treaty for the regulation of international air carriage, enacted into British law by the Schedule to the Carriage by Air Act of 1932. Plaintiff countered by contending that, according to Article 9 of that Convention, failure to include the particulars of volume or dimensions of the goods in the air waybill, as stipulated by Article 8, deprived defendants of the benefits of

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2 The Carriage by Air Act, 1932, in Schedule 1 to that Act, contains the English translation of the Warsaw Convention, the original text being in French. Article 22(2) of the Carriage by Air Act, 1932, reads as follows:
   In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

The Warsaw Convention of 1929 was amended in 1955 by the Hague Protocol (Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, 12 October 1929). The Hague Protocol was enacted into English law by The Carriage by Air Act, 1961 (9 & 10 Eliz. 2c. 27), which Act is actually the Warsaw Convention as amended at the Hague, 1955. The United States has never accepted the Hague Protocol, and hence the Protocol does not apply to the carriage between the United States and England. Therefore, reference is made in this case to the original Warsaw Convention, e.g., the Carriage by Air Act, 1932.

3 Article 9 of the Convention (Carriage by Air Act, 1932) declares:
   If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in Article 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability.

4 Article 8 of the Convention (Carriage by Air Act, 1932) states in part:
   The air consignment note shall contain the following particulars:
   
   (c) The agreed stopping places . . . .
   (g) The nature of the goods;
   (h) The number of the packages, the method of packing and the particular marks or numbers upon them;
   (i) The weight, the quantity and the volume or dimensions of the goods;
   (q) A statement that the carriage is subject to the rules relating to liability established by this Convention.

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limitation of liability for loss of the cargo, as conferred by Article 22. The trial court recognized that in both sections (h) and (i) of Article 8, the meaning of the original French text of the Convention was ambiguous. It then pointed out that the ambiguity in section (h) had been almost universally resolved by a conjunctive approach (so as to require inclusion in the air waybill of 3 of the 4 particulars of "the number of the packages, the method of packing and the particular marks or numbers upon them") rather than a disjunctive approach (which would require that only 1 of the 4 particulars be specified). The trial court also stated that Parliament had apparently resolved the similar ambiguity of section (i) in the same way via the English translation of the Convention, as contained in the Carriage by Air Act of 1932. Therefore, the trial court held that, according to this conjunctive approach, the defendants were not entitled to limit their liability where the particulars of volume and dimensions of the cargo were omitted from the air waybill.

Held, reversed: Parliament intended to give effect to the French text of the Convention. Accordingly, any inconsistencies between the English and French texts should be resolved by reference to the French. As the meaning of the French text was ambiguous, it should be interpreted with reference to present commercial practices. Therefore, the sender should give the weight of the goods where appropriate; however, he need not give the volume or dimensions unless it would be necessary or useful to do so. Accordingly, the defendants were not deprived of limitation of liability because of failure to include in the air waybill the particulars of volume and dimensions.


This Note will use Corocraft as an aid in contrasting the approach of the judiciary in its interpretation of the Warsaw Convention in cases involving carrier liability for damage to or loss of property transported with its interpretation of the Convention in cases dealing with carrier liability for injury to or death of passengers.

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Note 2, supra.

Article 36 of the Convention (Carriage by Air Act, 1932) states:

The Convention is drawn up in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland...

Article 8 of the original French text of the Convention reads in part as follows:

La lettre de transport aérien doit contenir les mentions suivantes:

(c) les arrêtés prévus, sous réserve de la faculté, pour le transporteur, de stipuler qu'il pourra les modifier in cas de nécessité et sans que cette modification puisse faire perdre au transport son caractère international;

(g) la nature de la marchandise;
(h) le nombre, le mode d'emballage, les marques particulières ou les numéros des colis;
(i) le poids, la quantité, le volume ou les dimensions de la marchandise;
(q) l'indication que le transport est soumis au régime de la responsabilité établi par la présente Convention.

This may be compared with the corresponding English translation in Schedule 1 to the Carriage by Air Act, 1932, note 4, supra.
The Warsaw Convention, drafted in 1929, was concerned primarily with protecting and assisting the fledgling international air transport industry, which, at that time, was in its infancy. Limitation of carrier liability was provided to shield the young airlines from financial insolvency which could easily result from litigation following an air disaster causing substantial injury or loss of life. Also, a pattern intended to standardize air transport documentation was provided for the purpose of promoting international uniformity. The benefits to the public were envisioned as being the creation of a more definite basis for recovery by passengers and shippers, which would tend to lessen litigation. Moreover, a clearer and more equitable basis upon which carriers would obtain insurance would in turn lower operating expenses, and thus reduce transportation charges.

A. Passenger Carriage

The greater part of judicial activity and professional concern with the Warsaw Convention has centered around the limitations of liability for passenger injury or death, as set out in Article 3 of the Convention. Interest increased after World War II when it became apparent that the limits of recovery were inadequate in relation to the standards of living in the western world. The need for increased liability had promptly exceeded the ever lessening need to protect the growing international air transport industry. As a result, the courts, particularly in the United States, where criticism of the limits of recovery has become acutely caustic from those enunciating the plaintiffs' position, became prone to find that the carrier, by failure to adhere strictly to a provision of the Convention, had lost the benefits of limitation of liability.

To alleviate this concern, some action was taken to raise the limits of liability by the Hague Protocol to the Warsaw Convention, signed in September, 1955. This agreement increased the limits of liability for passenger injury or death from the original of $8,300 (approximately) to $16,600 (approximately). Even though the limits were doubled, the United States refused to ratify the Protocol. Congress considered these new limits to be still grossly inadequate. Further mounting criticism led to a

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8 For a more complete description of the history of the Warsaw Convention and subsequent related agreements, see BILLYOU, AIR LAW, 2d ed. (N.Y. 1964); SHAWCROSS AND BEAUMONT, AIR LAW, 3d ed. (1969); Lowenfeld and Mendelsohn, The United States and the Warsaw Convention, 80 HARV. L. REV. 497 (1967).
10 See supra note 10.
11 See supra note 10.
decision by the United States to withdraw its adherence to the Convention. This resulted in the Montreal Agreement, which raised the limits to $75,000. The United States then withdrew its withdrawal. During the period leading up to Montreal, an interesting movement was afoot to require all United States carriers coming under the Convention to provide insurance coverage of $50,000 per passenger in addition to the amounts recoverable under the Convention. At present, the continued status of the Convention as a workable international agreement is uncertain. The least that can be said is that it will probably require modernization in the future in order to maintain its prominent position in international air transport regulation.

B. Cargo Carriage Contrast

Under the Convention there has been less activity and interest in claims arising out of loss of or damage to cargo or baggage than in the above-mentioned area of passenger liability. One reason for this difference is that society places a much higher value on human life and limb than on property, and the loss of an aircraft focuses attention more sharply on the passengers aboard than on baggage and cargo.

In the various methods of transporting cargo, whether by commercial carrier or by the postal system, it has been the custom to insure the goods shipped against loss or damage by merely declaring a value and paying a small supplementary sum. This effectively makes the carrier an insurer of the cargo to the value so declared, and tends to obviate the need for much litigation. The Warsaw Convention incorporated this method of ordinary business practice by Article 22(2), and the limitation of liability feature, in the absence of such a declaration of value and payment of a supplementary sum, was neither surprising nor new to the public at large. Therefore, the purpose of this aspect of the Convention is apparently standardization of documentation rather than limitation of liability, for this latter feature already existed in usual commercial practice in an easily circumventable form.

With reference to passengers, however, limitation of liability for their safety has not been the ordinary practice in general public transportation. Generally, public carriers have been held to a very high duty of care for passenger safety. The ordinary, unaware citizen would not expect a different set of rules merely because he happened to be on an international flight. Many such passengers evidently do not even bother to read the reverse side of a ticket, whether the Warsaw warnings be set out in a verbosity of "Lilliputian print" or presented boldly in 10 point type.  

17 See Billyou, supra note 8, at 129-31; Lowenfeld and Mendelsohn, supra note 8, at 533 et seq.
19 Article 22(2) of the Carriage by Air Act, 1932, note 2, supra.
21 See Lisi v. Alitalia-Linee Aeree Italiane, 370 F.2d 308 (2d Cir. 1966), where the airline lost
Hence, litigation following Warsaw passenger injury or death cases, is far more abundant than for property damage and loss, as the lack of hidden surprises concerning limitations in the Convention in cargo handling creates little more than an ordinary amount of judicial controversy.

III. WARSAW CONVENTION CARGO AND BAGGAGE CASES

Even though the United States courts are becoming ever more hostile to the Convention as it limits carrier liability for passenger harm, they have, nevertheless, refrained from enlarging the sphere of this hostility to those sections of the Convention pertaining to baggage and cargo. Thus, the English and American courts have approached baggage and cargo cases in much the same manner. So long as the documents referring to the items in question have been reasonably true to Convention-stipulated form, the courts appear to have leaned neither one way nor the other in interpreting the Convention. To the contrary, they have sought to apply the treaty whenever possible, but in the light of practical construction.

A doctrine of reasonable interpretation of the Convention’s provisions in cargo cases was established in 1954 by the American Smelting case. There a New York Supreme Court held that omission from the air waybill of the agreed stopping places (such information being required by Article 8 (c) of the Convention would not deprive the carrier of limitation of liability where the international character of the flight was clearly indicated by the places of departure and destination included in the air waybill. In reaching its decision the court stated:

It is the plaintiff’s contention... that exact compliance with article 8 is mandatory and defendant’s failure to adhere thereto in every respect prevents the air carrier from availing itself of any of the other provisions which limit or exclude liability for safe carriage. Contrary to the plaintiff’s contention, however, it is a general principle of construction with respect to treaties that they be construed so as to carry out their obvious purposes.

The court in American Smelting also pointed out a fact which is likewise apparent in Corocraft:

[The] plaintiff... could readily have eliminated any risk by paying a supplementary fee for the flight and then designating on the air waybill its request for insurance up to one hundred per cent of the declared value of the cargo. (Warsaw Convention, article 22, subdiv. 2). Plaintiff did not request this protection and thereby must be deemed to have assumed the complete risk of the flight... [A] judgment in [the plaintiff’s] favor would, in effect, hold defendant liable as an insurer of the full value of the shipment, even though defendant was paid only the usual cargo rate.
American Smelting, then, may be considered to buttress the standing of the Convention, as does Corocraft, in the area of cargo carriage by giving it an interpretation in consonance with accepted business practice. A similar holding to American Smelting is that of Kraus v. KLM, a 1949 case. There, sufficient compliance with the "agreed stopping places" requirement of Article 8(c) was found where the air waybill merely made reference to the air carrier's time-tables.

It is appropriate at this point to contrast the American Smelting, Kraus, and Corocraft holdings, concerning cargo, with a decision of 1966 by the United States Court of Appeals for the Second Circuit, Lisi v. Alitalia-Linee Aeree Italiane. Lisi involved personal injuries resulting from the crash of an Alitalia aircraft while en route from Rome to New York. There the court held that Alitalia's liability was not limited by the Convention, because, even though literal compliance to Article 3(-) was found in a statement printed on the ticket informing the ticket holder of the Warsaw limitations of personal liability, notice via the ticket was insufficient in that the printing was too small to be easily read. This holding, erosive of the Convention's rigidity, seems to have been responded to, however, by the Montreal Agreement provision requiring the Warsaw warnings to be set out clearly in 10 point type, thereby apparently eliminating further weakening interpretation on this point at the hands of the United States judiciary. Thus, it can be seen that the courts of the United States are drawing a sharp contrast between loss of life and loss of property.

There are, of course, cases in the Warsaw "property area" which defeat the carrier's reliance on liability limitation. An examination of some of these cases reveals no strongly liberal construction of the Convention to attain a desired result. The court in Flying Tiger Line, Inc. v. United States declared that where the carrier failed to deliver to the shipper a proper air waybill, but relied instead on a charter agreement between the

26 2 Av. Cas. 15,017 (1949).
27 Lisi v. Alitalia-Linee Aeree Italiane, 370 F.2d 508 (2d Cir. 1966).
28 Article 3 of the Convention states:
(1) In respect of the carriage of passengers a ticket shall be delivered containing:
(a) an indication of the places of departure and destination;
(b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
(c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.

shipper and the carrier, the carrier then lost the benefits of limitation of liability for loss of cargo, even though the charter agreement included a statement providing that liability of the carrier with respect to international transportation would be subject to the rules of the Warsaw Convention. The court held that the charter agreement was insufficient to comply with the requirement that an air waybill be delivered containing a statement that the provisions pertaining to limitation of liability apply to the carriage of goods. This case, therefore, makes it clear that Warsaw compels the use of the standard form of documentation set out in Article 8.

Orlove v. Philippine Air Lines, Inc.\(^1\) allowed a shipper to recover against the carrier in excess of the Warsaw limitations where the shipper had followed the carrier’s instructions not to declare a special value for the cargo to a subsequently connecting carrier, and the connecting carrier lost the shipment. This exception to the normal operation of the Convention was based solely upon the shipper’s literal compliance with the carrier’s terms (which were in contravention to the Convention), and does not of itself connote any aggressiveness of the court towards the Convention.

A 1969 New York Supreme Court decision, Stolk v. Compagnie Nationale Air France,\(^2\) would appear, at first glance, to be antagonistic to the provisions of the Convention relating to baggage, in that the liability limitation warning was set out properly in 10 point type (as per the Montreal Agreement). Although there was proper notice of limitation of liability for passenger safety, however, there was no such corresponding notice relating to baggage. The court stated, concerning this point:

Thus the plaintiff was neither alerted to the need to purchase baggage insurance nor appraised of the necessity to declare excess value in order to protect her property. . . . the concurrent absence of any equally clear, legible statement regarding the limits of liability for loss of baggage might readily tend to create a strong impression in the mind of a passenger that there are no limitations for baggage loss.\(^3\)

The court recognized this treaty as the “supreme law of the land,”\(^4\) and indicated its intention to put the Convention into full effect by the following statement:

Were the courts to adopt defendant’s position, the requirement of the convention to give adequate notice of the defendant’s potential limits of liability would be completely negated. Such a result would not only be unjust for the reasons above noted, but would supercede, by judicial fiat, a treaty of the United States. This court may not so rule.\(^5\)

Thus the Stolk case, as well, offers no indication of an antithetical approach of the courts to the Convention in relation to cargo and baggage, but rather a conclusion predictable from the overall meaning of the Convention itself.

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\(^1\) 257 F.2d 384 (2d Cir. 1958), cert. denied, 79 S.Ct. 230, 79 S.Ct. 235.
\(^3\) Id. at 61.
\(^4\) Id. at 63.
\(^5\) Id.
Another case, Seth v. BOAC, almost, by comparison, seems to favor the carrier. In that case the plaintiff had packed a valuable manuscript in one of his pieces of checked baggage, but declared no special value. Upon arriving in London, the baggage was not found. Up to this point, the plaintiff's passenger ticket and baggage check properly indicated two pieces of checked baggage. He continue his journey to the United States with the carrier's assurance that his baggage would be forwarded, but his ticket for this last part of the passage contained no indication of "number and weight of the packages," as required by Article 4(3)(f) of the Convention. The court held that, inspite of this deficiency, the ticket and baggage check complied, nevertheless, with the Convention because the plaintiff had "failed to show that there had been any baggage on the last stage of the journey." The plaintiff, therefore, was awarded recovery only to the limits imposed by the Convention. The Seth case resembles Corocraft closely in that the plaintiff had at his disposal a means of recovery in the event of loss at a small cost—declaration of a higher value and payment of a supplementary fee.

IV. COROCRAFT: A DEEPER LOOK

The Court of Appeals in Corocraft, in arriving at its application of the Convention, was explicit in rejecting the plaintiffs' reliance upon, and the trial court's following of, the English text of the Warsaw Convention. The court noted that it was the intention of the Carriage by Air Act of 1932 to put the Warsaw Convention into effect in English law rather than the act itself. The first section of the Act states that:

329 F.2d 302 (1st Cir. 1964).

Article 4(3)(f) of the Convention (28 U.S.C.A. § 1331(a), 49 Stat. 3015, 3019, 3021) provides:

1. For the transportation of baggage other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

2. The baggage check shall contain the following particulars:

   (f) The number and weight of the packages;

3. &nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&n

Supra note 36, at 302.

Article 22 of the Convention (49 Stat. 3000) contains provisions for limitation of liability:

1. In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. Where, in accordance with the law of the court to which the case is submitted, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2. In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

3. As regards objects of which the passenger takes charge himself the liability of the carrier shall be limited to 5,000 francs per passenger.

4. The sums mentioned above shall be deemed to refer to the French franc consisting of 61 2 milligrams of gold at the standard of fineness of nine hundred thousandths. These sums may be converted into any national currency in round figures.
The provisions thereof [of the Convention] as set out in the First Schedule of this Act shall ... have the force of law in the United Kingdom. ...

Turning to Article 36 of the First Schedule one finds the following statement:

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland.

Therefore, insofar as the English text in the First Schedule of the Act is not an exact translation of the original French text, reference to it by the Act of 1932 should be rejected (false demonstration non nocet), and reference to the French text pursued.

As the French text is unclear and ambiguous as to the actual intention of section (i), the court found itself free to follow the sound and effective remedial approach of the English Common Law by evaluating the overall intention of the Convention in relation to the common business practices of the particular trade or industry involved. It was noted that the airlines generally did not require the particulars of volume or dimensions, as the primary measure of freight charges stems from the weight of the cargo, and that these otherwise superfluous items should be included only where they are relevant or useful (as, for example, an item of cumbersome or unusual geometry, or an item of substantial volume and little weight). Accordingly, the court found that the air waybill in Corocraft did conform to the proper interpretation of Article 8 of the Convention, and therefore, the defendants were entitled to the limitation of liability provided by Article 22.

It was significantly noted that the plaintiffs in Corocraft had made no declaration of value of the contents of the package to the defendants, and had not paid the additional sum provided for by Article 22. In fact, the plaintiffs had indicated on the air waybill in the space provided for value declaration “NVD,” meaning “NO VALUE DECLARED.” In an adjacent space provided for declaration of value for customs purposes they had placed “2959.00” to indicate the value in American dollars. It becomes clearly apparent that the plaintiffs fully intended not to take advantage of the ease with which they could effectively insure their cargo with the airline, and it must be assumed that they were aware of the consequences.

In supporting its holding, the court noted that the plaintiffs could have brought their action in the United States, where the decision would have been in favor of the defendant, and that there should be consistency between the holdings of the two countries. Referring to a previous decision of the Queen’s Bench, Samuel Montagu & Co., Ltd. v. Swiss Air Transport Company, Ltd., the court stated (concerning Article 8(q)) that

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41 Id.
42 Id.
43 Id.
45 See supra note 4.
the court held that it should not be given a rigid interpretation such as would
hamper the conduct of business: but should be read as if it contained the
qualification "so far as applicable to the carriage."46

The court also referred to the American Smelting case47 and noted that a
liberal interpretation there of Article 8(c) did not require inclusion on the
air waybill of the "agreed stopping places," and stated that "the Courts of
all the countries should interpret this Convention in the same way."48

V. Conclusion

It is apparent that the American and British courts construe the Con-
vention liberally, so as to make it practical and effective, in the areas of
cargo and baggage liability, and the cases indicate no great readiness on the
part of the courts to use a more technical point as a tool in arriving at a
desired result. In contrast, however, the very low Warsaw limitations of
liability for personal injury or death, by reason of public policy, have been
and will continue to be attacked by judicial interpretation (at least in the
United States), even where such action is premised upon a mere techni-
cality. In view of the success and strength of the domestic air transport
industry in the United States, where air carriers cannot hide behind an
artificial, Warsaw-type shield of limitation of liability for their torts, the
hardships inflicted on individuals and families by the Warsaw limitations
are unconscienable to the mind of this writer. So long as an unreasonable
limitation of carrier liability remains in Warsaw passenger cases (or per-
haps any limitation, for that matter), it is predictable that the courts of
the United States will continue their dual-standard approach of interpreta-
tion of the Convention in the areas of personal and property liability.
Consistency of interpretation may result only after all limitation of lia-
ability (e.g., recovery) is eliminated. It has been suggested that the risk of
liability be covered by insurance, as a regular operating expense of the
carriers. Most probably, no halfway point to this goal will ever remain
undisturbed.

Albert L. Holman

46 Note 44, supra, at 323.
47 Note 22, supra, at 15.
48 Note 40, supra.