

Title: Product Liability in International Civil Aviation

Problem statement

The Montreal Convention of 1999 lays out the international rules on airline liability in cases of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo. Due to the exclusivity of this Convention, the passenger is permitted to seek compensation directly from the airline. However, as operating an aircraft is an extremely technical activity, the cause of the accident may be due to technical reasons. For example, a part of the aircraft may be defective and this could cause injury, death or delay. However, the product would have been made by a third party – i.e. the manufacturer – and not by the airline.

Only if the claim is outside the scope of the Montreal Convention, can compensation be sought from a third-party by the passenger, which would typically be in a very limited situation. In addition, the airline may wish to make a separate claim against the manufacturer. These claims would then be against the manufacturer via a breach of contract warranty (only between contractual partners) or a tort action based on negligence. The issue is complicated as many aircraft involved in international aviation are (dry or wet) leased, so the interests of the leaser, and the relationship between the airline and the manufacturer must also be considered. Due to this, private law is crucial in determining the applicable laws and the jurisdiction to determine the correct domestic court.

The manufacturing process is evolving and becoming ever more complex and sophisticated. Further, there is a necessity for the aviation sector to be green and sustainable. These two forces raise questions about *reuse*, *reduction* and *recycling*. Consequently, liability questions about the refurbishment of parts, the manufacturing of products ‘as new’ with reused parts, and the use of recycled materials need to be answered.

As aviation is a truly international endeavour, with airlines, passengers and manufacturers located around the world, it may be time to have a unified set of product liability rules, which simplify the situation, ensure those suffering losses are appropriately protected by the law and those involved have legal certainty, and address the developments in the manufacturing process.

Research question(s)

How to Address Product Liability in Case of Reused Parts and Materials?

Expected type of work

- Desktop research of primary sources (treaties, EU law, national legislation and court cases) and secondary sources (academic writings and reports).
- Interviews with manufacturers and other relevant stakeholders (e.g. Leiden staff and visiting lecturers).



References

- Convention for the Unification Of Certain Rules For International Carriage by Air of 1999 (Montreal Convention 1999). Link: <https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf>.
- Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products OJ L 210, p. 29–33. Link: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31985L0374>.
- Evaluation of Council Directive 85/374/EEC on the Approximation of Laws, Regulations and Administrative Provisions of the Member States Concerning Liability for Defective Products, FINAL REPORT. Link: <https://op.europa.eu/en/publication-detail/-/publication/d4e3e1f5-526c-11e8-be1d-01aa75ed71a1/language-en>.
- Pablo Mendes de Leon, *Introduction To Air Law*, Eleventh Edition, Chapter 8 Product Liability.
- David Levine and Carel Stolker, ‘Aviation Products Liability for Manufacturing and Design Defects: Two Recent Developments’, 14 *World Bulletin* 93 (1998). Link: http://repository.uchastings.edu/faculty_scholarship/1329.

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