

Liability or Liberty: An Assessment of Air Carrier’s Liability under the Montreal Convention to Passengers in Case of an Accident

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This study investigated whether the international legal framework established by the Montreal Convention of 1999 (MC) achieved its intended purpose of establishing air carrier liability for passenger death or injury caused by an accident during international air transport. In addition, the study evaluated the legal lacunae that exists in the present legal regime in establishing strict liability of the air carrier in case of an accident during air carriage. To reach the objective of the study, it adopted a qualitative research method that includes a library-based black letter approach. The study chronologically evaluated the MC Article 17 governing the air carrier liability concept which covers elements of terms such as accident, embarking or disembarking, and bodily injury. The study also extensively analysed significant jurisdictional approaches made in many jurisdictions when establishing carrier liability for tort accidents, including those that resulted in innovative mechanisms, refinements, and reforms involving passengers in air carriage. Further analysis covered the salient aspects of a two-tier liability system for compensation on a liability claim in the MC. Based on the findings, the paper argues that the liberal jurisprudence articulation effort on carriers’ strict liability concept under MC led to certain judicial activism and resulted in creating legal lacunae due to deviating from the strict liability expected from the carrier established in Article 17. Finally, the paper proposes recommendations such as updating air carrier liability legislation to address identified legal issues and gaps in the future.

Keywords: *carrier liability, Montreal Convention, accident, bodily injury, embarking, disembarking*