

RELEVANT STATUTORY AND TARIFF EXTRACTS

RULE 28 ADDITIONAL LIABILITY LIMITATIONS

For the purposes of international carriage governed by the Montreal Convention, the liability rules set out in the Montreal Convention are fully incorporated herein and shall supersede and prevail over any provisions of this tariff which may be inconsistent with those rules.

[...]

C) The Carrier shall be liable for damage occasioned by delay in the carriage of passengers by air, as provided in the following paragraphs:

- 1) The Carrier shall not be liable if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage, or that it was impossible for it or them to take such measures.
- 2) Airport, air traffic control, security, and other facilities or personnel, whether public or private, not under the control and direction of the Carrier are not servants or agents of the Carrier, and the Carrier is not liable to the extent the delay is caused by these kinds of facilities or personnel.
- 3) Damages occasioned by delay are subject to the terms, limitations and defenses set forth in the Warsaw Convention and the Montreal Convention, whichever may apply. They include foreseeable compensatory damages sustained by a passenger and do not include mental injury damages.

[...]

D) The Carrier is liable for damages sustained in the case of destruction or loss of, damage to, or delay of checked and unchecked baggage, as provided in the following paragraphs:

[...]

- 4) The Carrier is not liable for destruction, loss, damage, or delay of baggage not in the charge of the Carrier, including baggage undergoing security inspections or measures not under the control and direction of the Carrier. When transportation is via UA and one or more carriers that exclude certain items in checked baggage from their liability, UA will not be liable for the excluded items.

- 5) The Carrier reserves all defenses and limitations available under the Warsaw Convention and the Montreal Convention, whichever may apply to such claims including, but not limited to, the defense of Article 20 of the Warsaw Convention and Article 19 of the Montreal Convention, and the exoneration defence of Article 21 of the Warsaw Convention and Article 30 of the Montreal Convention, except that the Carrier shall not invoke Article 22(2) and (3) of the Warsaw Convention in a manner inconsistent with paragraph (1) hereof. The limits of liability shall not apply in cases described in Article 23 of the Warsaw Convention or Article 22(5) of the Montreal Convention, whichever may apply.

Air Transportation Regulations, SOR/88-58, as amended

Paragraph 18(b)

Every scheduled international licence and non-scheduled international licence is subject to the following conditions:

[...]

(b) the licensee shall not make publicly any statement that is false or misleading with respect to the licensee's air service or any service incidental thereto; and

[...]

Subsection 110(4)

Where a tariff is filed containing the date of publication and the effective date and is consistent with these Regulations and any orders of the Agency, the tolls and terms and conditions of carriage in the tariff shall, unless they are rejected, disallowed or suspended by the Agency or unless they are replaced by a new tariff, take effect on the date stated in the tariff, and the air carrier shall on and after that date charge the tolls and apply the terms and conditions of carriage specified in the tariff.

Subsection 111(1)

All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

Section 113

The Agency may

- (a) suspend any tariff or portion of a tariff that appears not to conform with subsections 110(3) to (5) or section 111 or 112, or disallow any tariff or portion of a tariff that does not conform with any of those provisions; and

(b) establish and substitute another tariff or portion thereof for any tariff or portion thereof disallowed under paragraph (a).

Section 122

Every tariff shall contain

(a) the terms and conditions governing the tariff generally, stated in such a way that it is clear as to how the terms and conditions apply to the tolls named in the tariff;

(b) the tolls, together with the names of the points from and to which or between which the tolls apply, arranged in a simple and systematic manner with, in the case of commodity tolls, goods clearly identified; and

(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

[...]

(x) limits of liability respecting passengers and goods,

(xi) exclusions from liability respecting passengers and goods, and

[...]

The Montreal Convention

Article 17 – Death and injury of passengers - damage to baggage

1. 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.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

Article 19 – Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 26 – Invalidity of contractual provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 29 - Basis of Claims

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 31 - Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

Article 36(3) - Successive Carriage

[...]

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.