

Airline Liability under South African Law

Travel Law Forum

Friday, March 16, 2018

Athens

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INTRODUCTION

APPLICABLE LEGISLATION

Liability in the aviation sector is governed by –

- parliamentary and subordinate **legislation** on aviation matters,
- multilateral **international conventions**
- ***and the common law.***

The **Carriage by Air Act** No. 17 of 1946 gives the **Montreal Convention** the force of law in South Africa which modernises and consolidates the liability system introduced by its predecessor, the **Warsaw Convention 1929** through the introduction of a common liability standard.

This standard relates to passenger death, injury and delay, baggage and cargo claims.

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AIRLINE LIABILITY

SA Courts look to existing local and international case law on existing “**Warsaw Convention**” cases and in particular those of common law countries such as the United Kingdom

The law regulating the liability for damages is **purely civil** - Section 8 of the **Civil Aviation Act** confirms and mirrors the legislative provisions of **strict liability** where the *registered owner of an aircraft is liable for certain types of damages.*

Most recent liability claims have been dealt with by **private arbitration** – e.g. (**SA Airlink runway overrun accident**) mainly due to highly technical nature of the claims; and

A ZS registered aircraft caught up in the Arab Spring Revolution involving the London War risks market was also arbitrated privately.

Although a passenger claim for **emotional distress** has been brought in the **High Court** arising out of that accident.

LOCAL LAWS AFFECTING PASSENGERS

Where Warsaw or Montreal do not apply, **domestic laws** adequately fill the gap – e.g.

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CRIMINAL ACTS

Unruly passengers and communication of false information which interfered with the operation of an air carrier constitutes a crime under the Civil Aviation Act

CONSUMER PROTECTION

THE Consumer Protection Act 68 of 2009 (CPA) provides protections to passengers in the event of a **denial of boarding, delayed or cancelled flights.**

The CPA also provides for the reasonableness test for **overselling and overbooking** and the granting of **rights to airline passengers, to cancel advance bookings** notwithstanding any agreement between the consumer and supplier in question to the contrary.

LAWS AFFECTING PASSENGERS cont.

THE COMPETITION ACT

The Competition Act has been utilised to prohibit horizontal and vertical restraints and prevent abuse of dominance in the airline industry.

Recent competition law cases -

An abuse of dominance decision taken against SAA by Nationwide and Comair regarding the offering of **retroactive incentive schemes to travel agents** (much like in the British Airways case in Europe).

And the very recent block by the Commission of SA Airlink's purchase of the smaller rival airline Safair.

LAWS AFFECTING PASSENGERS cont.

DATA PROTECTION

South African has recently promulgated the **Protection of Personal Information Act** No 4 of 2013 (POPI) and by comparison the EU General Data Protection Regulation –

- GDPR aims to set a minimum standard for all members of the EU, the POPI Act is limited to only the jurisdiction of SA.
- GDPR applies to the personal data all of all EU data subjects, the POPI applies to personal info processed within the borders of SA.
- POPIA extends to the personal information of juristic persons (i.e. legal entities) and not just individuals.



That's all Folks!