AVIATION COMMITTEE SESSION OF THE 6TH BUSINESS LAW CONFERENCE OF THE NIGERIAN BAR ASSOCIATION SECTION ON BUSINESS LAW

CURRENT TRENDS IN RESOLVING CARRAIGE BY AIR DISPUTES - AN EXAMINATION OF THE IMPACT OF THE MONTREAL CONVENTION

LIABILITY FOR LOSS DESTRUCTION AND DAMAGE TO BAGGAGE AND CARGO

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Introduction:

- By Presidential assent Nigeria's most recent Civil Aviation Act aptly named the Nigerian Civil Aviation Act 2006 (The Act) was duly signed into law by the then President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, on the 14th of November 2006.

- However all regulations, bye-laws and subsidiary legislation would remain in force until replaced under the new Act.

- The swift passage of the Act in 2006 was, without doubt, the result of an overwhelming number of fatal air accidents within the national air space. In 2005 there were four air crashes, in focus were the Bellview and Sosoliso air accidents of late 2005 which led to the death of 225 (Two Hundred and Twenty Five) passengers. Therefore the Act was expected to represent an integral part of Governments policy on security and safety in the Country's Civil Aviation Industry.

- The Act, in attempting to create improved efficiency and safety, would not only provide political and financial autonomy to the Nigerian Civil Aviation Authority, more importantly it would create consistency in all Nigerian Civil Aviation laws and regulations in accordance with international standards.

Introduction continued:

- Accordingly, by virtue of section 77 of the Act the Carriage by Air Order of 1953 (Warsaw Convention 1929), The Civil Aviation Act Cap 51 Laws of the Federation of Nigeria 1990 as amended in 1999 and the Nigerian Civil Aviation Authority (Establishment) Act No. 49 1999, were repealed.

- The changes were significant, particularly in relation to the laws on international and non-international carriage by air, **the subject at hand**.

- Section 48 of the Act, for the first time in the history of Nigerian Civil Aviation, adopted and codified the **Convention for the Unification of Certain Rules relating to international and non-international Carriage by Air, respectively, signed in Montreal on the 28th of May 1999 (hereinafter referred to as the Montreal Convention), as set out in schedules II and III respectively of the Act and as amended.**

- The Montreal Convention, often referred to as the Warsaw Convention as amended in Montreal (1999) commenced life as the Warsaw Convention for the Unification of Certain Rules relating to respectively international and non-international, Carriage by Air as adopted in Nigeria by virtue of the Carriage by Air (Colonies, Protectorates and Trust Territories) Order of 1953.

The Warsaw Regime

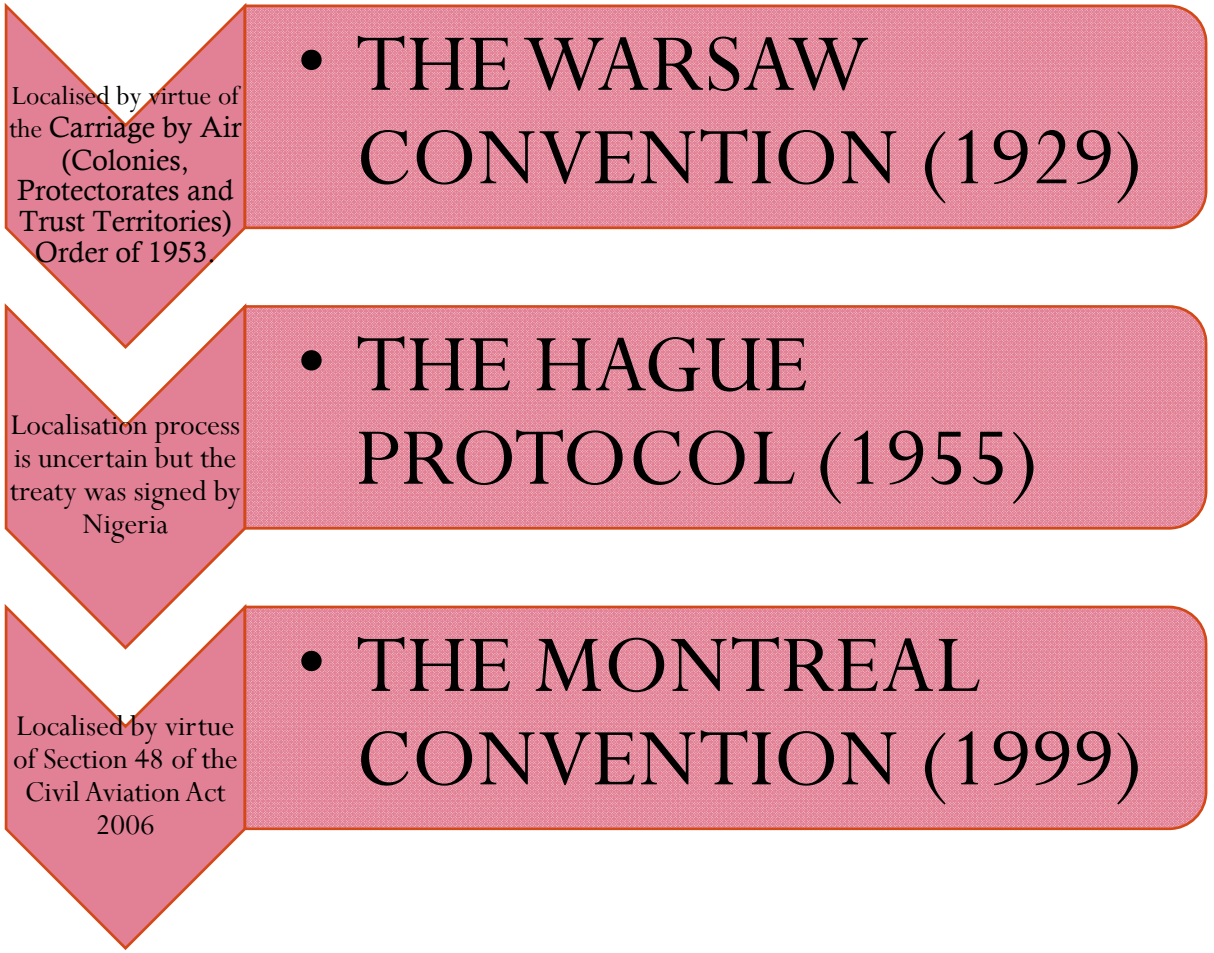
- In 1929 an International Conference on Private Aeronautical Law convened in Warsaw, Poland. The outcome was the Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at Warsaw on October 12, 1929 (Warsaw Convention).

- At the time the Convention was revolutionary in its approach. It provided limitations on liability and uniform liability rules applicable to international and non-international air transport of passengers, baggage and cargo.

- The legal basis of the liability of the carrier is a fault liability but with a reversed burden of proof, leaving the carrier with the onus of the burden of proof. The idea is that the carrier bears the burden of establishing it's defence in exchange for general limitation of liability, besides exceptional circumstances under the Convention.

- Celebrated as one of the most widely accepted international treaties the Convention created certainty and uniformity at a time the rights and liabilities of international air passengers and airlines depended on the diverse laws of the countries involved in carriage by air and the terms of the contracts made under specific circumstances, which often resulted in uncertainty and confusion.

THE WARSAW REGIME



The Applicability of the Warsaw Regime, in Nigeria

- The importance of the adoption and codification of the Montreal Convention and by extension the Warsaw Regime cannot be over emphasised when placed in the context of the previous and somewhat fierce legal battles on the *"applicability of the Warsaw Convention"*.

- Prior to the Act Nigeria's Supreme Court, in the case of Ibidapo v. Lufthansa Airlines reviewed and finally laid to rest the issue of the applicability of the Warsaw Convention of 1929, in Nigeria.

- Wali J.S.C (ahtw) said at page 149 paragraphs A-B:

> *"The 1953 Order making the Warsaw Convention as part of the existing law of Nigeria still subsists, since it has neither been repealed nor declared invalid"*

- In the same case, IGUH J.S.C (ahtw) went on to say at pages 162-163 paragraphs H-B:

> *"In my view, this status of the 1953 Order as an "existing law" has remained unchanged till this day notwithstanding the constitutional change of 1963 and 1979"*

The Applicability of the Warsaw Regime in Nigeria - continued

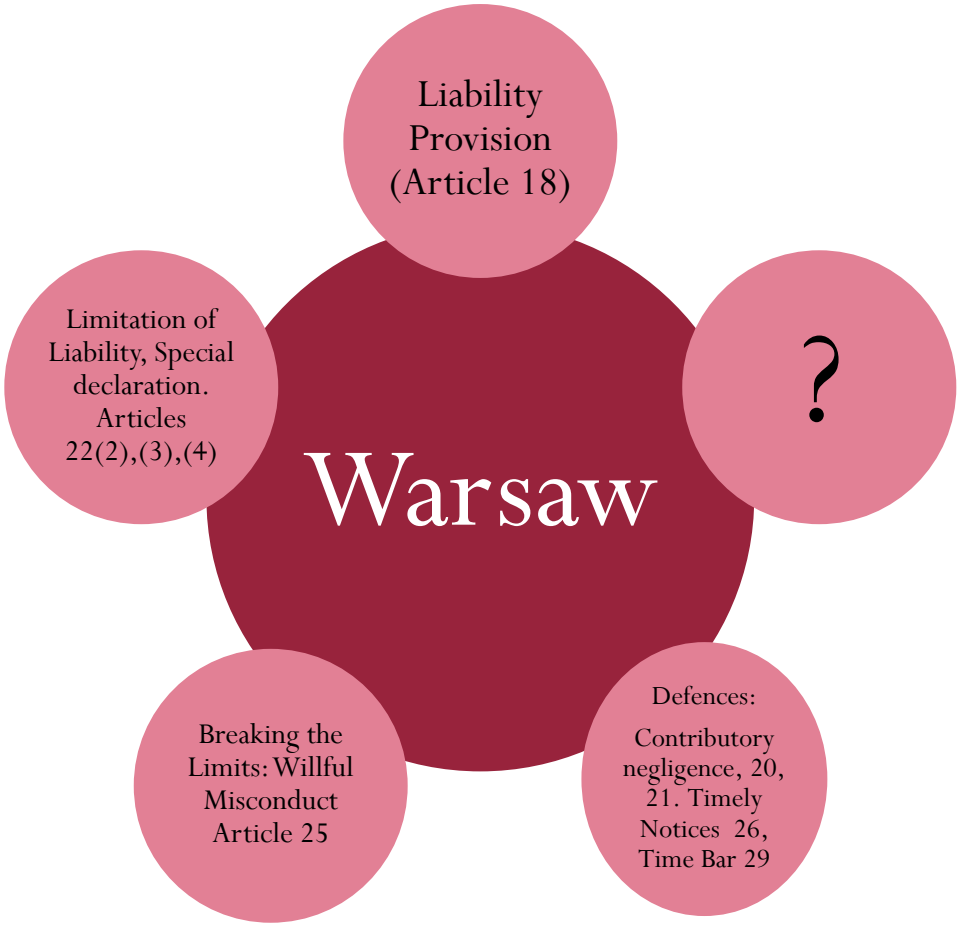
- In Kabo Air Limited v. Oladipo the Court of Appeal per Obadina J.C.A followed the decision in the Ibidapo case and applied principles enunciated therein to non-international travel.

"It is therefore my view that notwithstanding the omission of the 1953 Order that is "The Carriage by Air (Non – International Carriage) (Colonies, Protectorates, and Trusts Territories) Order, 1953" from the revised edition, Laws of the Federation of Nigeria 1990, the Order is still by virtue of the combined provisions of section 3(1) and (2) of the Revised Edition (Laws of the Federation of Nigeria) Decree No. 21 of 1990 an existing and applicable law in Nigeria".

In my view, this status of the 1953 Order as an "existing law" has remained unchanged till this day notwithstanding the constitutional change of 1963 and 1979"

- Therefore today, in Nigeria the law of international and non- international carriage is governed exclusively by the Convention for the Unification of Certain Rules relating to, respectively, international and non-international Carriage by Air, signed in Montreal on the 28th of May 1999 (hereinafter to be referred to as the Montreal Convention), duly adopted and codified by virtue of Section 48 of the Act.

OVERVIEW OF THE CONVENTIONS



The Liability Provisions – Damage to Baggage and Cargo
The Warsaw Convention (Articles 18)

- Article 18 of the Warsaw Convention states (Damage to Baggage and Cargo) :

"1. The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

2. The carriage by air comprises of the period during which the luggage or goods are in charge of the carrier

3. The period of the carriage by air does not carriage outside the aerodrome except such a carriage is incidental to the contract, subject to proof to the contrary".

The Liability Provisions – Damage to Baggage and Cargo. The Montreal Convention (Articles 17 (2), (3) and (4))

- Article 17(2) of the Montreal Convention States (Damage to Baggage) :

"2. The carrier 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.

The Liability Provisions – Damage to Baggage and Cargo. The Montreal Convention (Articles 17 (2), (3) and (4)), Continued

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage."

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The Liability Provisions – Damage to Baggage and Cargo. The Montreal Convention (Articles 18 (1), (2), (3), (4)), continued.

- Article 18 of the Montreal Convention States (Damage to Cargo) :

> *"1. The carrier is liable for damage sustained in the event of the destruction or loss of or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.*

Red: Slight Changes

Blue: New provisions

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The Liability Provisions – Damage to Baggage and Cargo. The Montreal Convention (Articles 18 (1), (2), (3), (4)), continued.

2. *However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:*

   (a) inherent defect, quality or vice of that cargo;

   (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;

   (c) an act of war or an armed conflict;

   (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo".

Red: Slight Changes

Blue: New provisions

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The Liability Provisions – Damage to Baggage and Cargo. The Montreal Convention (Articles 18 (1), (2), (3), (4)), continued.

"3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air".

Red: Slight Changes

Blue: New provisions

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The Liability Provisions – Damage to Baggage and Cargo.

RECAP ON CHANGES UNDER MONTREAL

- Unlike the Warsaw Article 17(2) of the Montreal Convention does not define or describe the ambit of carriage by air.
- Interestingly Article 17(2) introducing a fresh absolution provision - inherent defect, quality or vice of the baggage.
- Unlike the Warsaw, the Montreal does make reference to unchecked baggage, including personal items, where liability manifests upon proof of damage resulting from the fault of the carrier, its servants or agents.
- Refreshing for the passenger is the surprise addition contained in Article 17(3) "*If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage*".
- Article 18 of the Montreal Convention deals specifically with liability for destruction or loss of or damage to Cargo.
- Article 18 (2) which absolves the carrier if its able to prove "*destruction, or loss of, or damage to, the cargo resulted from one or more of the following: (a) inherent defect, quality or vice of that cargo; (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents; (c) an act of war or an armed conflict; (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.*
- Finally, as earlier stated, Article 18(4) carriage via another mode of transport, without the consent of the consignor, is deemed to be within the period of carriage by air.

Financial Limits of Liability
The Warsaw Convention (Articles 22(2),(3) and (4))

"2. 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 passenger or consignee has made a special declaration of the value at delivery and has paid a supplementary sum.

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

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Financial Limits of Liability
The Montreal Convention (Articles 22(2),(3) and (4))

"2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger unless passenger has made a special declaration of the value at delivery and has paid a supplementary sum

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogram, unless consignee has made a special declaration of the value at delivery and has paid a supplementary sum.

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The Montreal Convention (Articles 22(2),(3) and (4)), continued

4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability".

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Financial Limits of Liability
What are Special Drawing Rights

- The SDR is an artificial currency created by the International Monetary Fund (IMF) in 1969. SDRs are allocated to member countries and can be fully converted into international currencies so they serve as a supplement to the official foreign reserves of member countries. The SDR to Naira value is obtainable by either making an enquiry to the Central Bank of Nigeria or simply obtaining a U.S. Dollar value of the SDR often posted on the IMF's website.

- In accordance with Article 23(1) of the Montreal Convention conversion of the monetary units is simply carried out by converting the stated sum i.e *1,000 Special Drawing Rights for each passenger and 17 special drawing rights per kilogram*, into Naira at the date of Judgment.

- Evidently Nigeria is a member of the IMF and therefore has a current rate of exchange of 1.02 SDR to roughly =N= 250.00 (Two Hundred and Fifty Naira).

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Financial Limits of Liability
What are Special Drawing Rights

Date	Currency	Buying(NGN)	Central(NGN)	Selling(NGN)
6/11/2012	SDR	234.0229	234.7783	235.5337
6/8/2012	SDR	233.9323	234.6877	235.4431
6/7/2012	SDR	234.9232	235.6818	236.4404
6/6/2012	SDR	234.3194	235.0761	235.8327
6/5/2012	SDR	239.8471	240.6218	241.3965
6/4/2012	SDR	233.1598	233.9129	234.666
6/1/2012	SDR	233.0845	233.8376	234.5907

SDR/ NAIRA EXCHANGE FOR THE MONTH OF JUNE

Source CBN

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Financial Limits of Liability Special Declarations Article 22(2)

The liability of the carrier in the case of destruction, loss, and/or damage of baggage or cargo is limited respectively unless the passenger or consignee made a special declaration of interest upon delivery at the destination and had paid a supplementary sum if the case so required.

See **Cameroon Airlines v. Abdul Kareem** (2003)11 NWLR (Part 830) 1 At **pages 23-24 paragraphs F-**B.

Breaking Limits of Liability
The Warsaw Convention (Article 25)

Article 25(1) of the Warsaw Convention

Carrier shall not be entitled to exclude or limit his liability, if the damage is caused by his **willful misconduct**. This will also apply to an employee or agent acting within the scope of employment.

Breaking Limits of Liability
The Montreal Convention (Article 22(5))

- That the foregoing provisions of paragraphs 1 and 2 of this Article **(which relate to damage caused by delay and destruction, loss damage or delay in the carriage of baggage, respectively)** shall not apply if it is proved that the **damage resulted from an act or omission of the carrier**, its servants or agents, **done with intent to cause damage or recklessly and with knowledge that damage would probably result**; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

Breaking Limits of Liability
Case Law

- **Horabin v. British Airways Corporation.** Where at page 1019 paragraphs F-H Barry J said:

"Willful misconduct is misconduct to which the will is a party and it is wholly different in kind from mere negligence or carelessness, however gross that negligence or carelessness may be. The will must be a party to the misconduct, and not merely a party to the conduct of which complaint is made. As an example if a pilot of an aircraft knowingly does something which subsequently a Jury find amounted to misconduct, that fact alone does not show that he was guilty of willful misconduct. To establish willful misconduct on the part of this imaginary pilot, it must be shown, not only that he knowingly (and in that sense willfully) did the wrongful act, but also that when he did it, he was aware that it was wrongful .i.e that he was aware that he was committing misconduct".

- At page 1023 paragraphs G-H he went on to say:

"You have also to be satisfied that at the time when the pilot knowingly departed from the instructions, he realised that he was doing something which amounted to misconduct i.e something which was contrary to the interests of the passengers or of the corporation which employed him and which owned the aircraft, or involved his passengers and the aircraft in a greater risk than would have been involved if he had adhered to his instructions. 'A greater risk' means a greater risk looked at in the broad sense i.e, a risk which it is less in the interests of his passengers to take than some other risk".

Breaking Limits of Liability
Case Law

- In **Thomas Cook v. Air Malta Cresswell J.** formulated proposed steps to be considered when resolving the issue of willful misconduct:

"

The starting point when considering whether in any given circumstances the acts or omissions of a person entrusted with goods of another amounted to willful misconduct is an enquiry about the conduct ordinarily to be expected in the particular circumstance.

The next step is to ask whether the acts or omissions of the defendant were so far outside the range of such conduct as to be properly regarded as "misconduct". (An important circumstance would be a deliberate disregard of express instructions clearly given and understood)

It is next necessary to consider whether the misconduct was willful.

What does not amount to willful misconduct? Willful misconduct is far beyond negligence, even gross or culpable negligence.

What does amount to willful misconduct? A person willfully misconducts himself if he knows and appreciates to do or to fail or omit to do something and yet (a) intentionally does or fails or omits to do it or (b) persists in the act, failure or omission regardless of the consequences or (c) acts with reckless carelessness, not caring what the result of his carelessness may be. (A person acts with reckless carelessness if, aware of a risk that goods in his care may be lost or damaged, he deliberately goes ahead and takes the risks, when it is unreasonable in all the circumstances for him to do so).

The final step is to consider whether willful misconduct (if established) caused the loss of or damage to the goods".

Breaking Limits of Liability
Case Law

- In another English case **Goldman v. Thai Airways International Ltd** the Court said:

"for damages awardable against the carrier to be at large in accordance with the provisions of Article 25 of the Convention, as amended at the Hague, it is not sufficient for the act or omission that is relied on to have been done recklessly:

'it must also be shown to have been done with knowledge that damage would probably result'

Thus where a pilot did not know that damage would probably result from his omission, the court is not entitled to attribute to him knowledge which another pilot might have possessed or which himself should have possessed".

Breaking Limits of Liability Case Law

- In Nigeria the Court of Appeal decision of Harka Air Services Limited v. Keazor presented a fresh opportunity for creation of local jurisprudence on the ambit of "*willful misconduct",* despite the fact that the alleged damage in this case related to claims for injury.

- The erudite Ogunbiyi J.S.C appears to follow the approach in the Horabin case when at page 190 paragraph H – D he says:

"The concept of "Willful misconduct was defined in the English case of Horabin v. BOAC reference supra, as follows:-

Willful misconduct is misconduct to which the will is a party and it is wholly different in kind from mere negligence or carelessness, however gross that negligence or carelessness may be … To be guilty of willful misconduct, the person concerned must appreciate that he is acting wrongfully, or is wrongfully omitting to act, and yet persists in so acting or omitting to act regardless of the consequences, or acts or omits to act with reckless indifference as to what the result may be; the problems … must be considered in the light of that definition."

From the foregoing definition, the act that constitutes willful misconduct is clear cut. It relates to proof of a conscious intent to do, or omit the doing of an act from which harm results to another. It is an intentional omission of a manifest duty to which there must be a realization of the probability of injury from the conduct and a disregard of the probable consequence of such conduct"

Breaking Limits of Liability Case Law

- At page 192 paragraphs G – B the Court went on to say:

"Deducing from the effectual interpretation of Article 25 therefore, the deductive proof of willful misconduct leaves wide open door to assessment of damage, per the Court of Appeal decision in the case of Goldman v. Thai Airways International Ltd. (supra) Eveleigh CJ for instance at p. 695 in attempting to define willful misconduct had this to say:-

"for damages awarded against the carrier to be at large in accordance with the provision of Article 25 of the convention it is not sufficient for the act or omission that is relied on to have been done recklessly; it must also be shown to have been done with knowledge that damage would probably result. Thus, where a pilot did not know that damage would probably result from his omissions, the court is not entitled to attribute to him knowledge which another pilot might have possessed or which he himself should have possessed."

The court went further to expound on the phrase "with knowledge that damages would probably result," and held that:-

"The probability of the result must be read as qualifying the nature of the act and if the nature of the act is to make the damage probable, provided the concurrent circumstances for impact or damage are there, then the probability of damages is fulfilled."

Breaking Limits of Liability Case Law

- More recently the Court of Appeal was called upon, yet again, to deliberate upon the ambit of "*willful misconduct",* however on this occasion the subject matter was within the context of damage occasioned by delay in the carriage of baggage.

- The case of British Airways v. Atoyebi provided, for the first time, an opportunity for the creation of local jurisprudence on the subject of claims at large in respect of baggage claims, beyond the limitation sum of USD 250.00 per kilo.

- What's interesting about the Atoyebi case is that Court of Appeal's decision, in recognising Article 25 of the Warsaw Convention, simply did not utilise the provision in arriving at its decision.

- According to Saulawa J.C.A, precisely at page 602 paragraph B, the decision was based on the fact that:

"it is rather obvious from both the pleadings and evidence adduced before the lower court, that the appellant was ***inexplicably grossly negligent*** *in the performance of the duties thereof to the respondent"*

Breaking Limits of Liability
Case Law

- Later on at paragraphs F-G the respected jurist went on to say:

"the excruciating efforts made by the respondent to retrieve the said hand baggage thereof in London vis-a-vis the resultant expenses and inconveniences to which he was subjected, have constituted direct consequences of the appellants breach of duty of care owed the respondent".

In a sense the Court of Appeal in that decision acknowledges the need to invoke wilful misconduct as an escape latch but then uses the lesser specie of gross negligence as a release.

Breaking Limits of Liability Case Law

- In the more recent Supreme Court decision of Cameroon Airlines v. Otutuizi the exception under Article 25 of the Warsaw Convention was invoked where, at page 539 paragraph F-G the renowned Rhodes – Vivour J.S.C said:

"It is well settled that the appellant was in breach of contract as principal and agent in not flying the respondent to Manzini, Swaziland, (exhibits A and B) It is reasonably forseable that a passenger (the respondent) arriving in South Africa without a transit visa would be arrested, with grave consequences for the passenger. Consequently the act of the appellant flying the respondent to South Africa with no justifiable reason for doing so and knowing fully well that the respondent did not have a transit visa, apart from being a clear breach of the agreed route, it amounts to a negligent breach of contract. A willful misconduct in the extreme".

Defences Available to the Carrier
The Warsaw Convention (Articles 20 and 21)

The Warsaw Convention (Articles 20 and 21)

- Article 20 of the Warsaw Convention States:

"1. The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures".

2. In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage".

- Whilst Article 21 states:

"*If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability".*

Defences Available to the Carrier
The Montreal Convention (Articles 20, 17(2) and 18(2))

- In contrast the Defence provisions of the Montreal Convention do not include the Article 20 provisions of the Warsaw Convention. However Article 21, as regard baggage and cargo, is replicated in Article 20 under the Montreal Convention.

- Under Montreal's Article 20 the carrier is able to exonerate itself from liability absolutely or partially if able to establish contributory negligence, by the passenger or consignee. Therefore the passenger or consignee is expected to exercise reasonable care and skill in the type and condition of packaging.

- It is important to bear in mind Articles 17 (2) relating to baggage and 18(2) on cargo wherein the carrier is availed with the defences of inherent defect, quality or vice of the baggage and in respect of cargo inherent defect, quality or vice, defective packaging, an act of war or armed conflict, and an act of public authority.

Complaints
The Warsaw Convention (Articles 26)

The Warsaw Convention (Articles 26) – Timely Notice of Complaints

- Article 26 of the Warsaw Convention states:

1. Receipt of luggage or goods without complaint is prima facie evidence that the goods are in good.

2.

- *In the case of damage complaint must be made forthwith*
- *In the case of luggage within three days*
- *In the case of good seven days.*
- *In the case of delay fourteen days.*

3. Every complaint must be made in writing

4. Failing complaint within the times aforesaid, ***no action shall lie***

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Defences Available to the Carrier – Timely Notices of Complaints
The Montreal Convention (Article 31)

- *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.*
- *3. Every complaint must be made in writing and given or dispatched within the times aforesaid.*
- *4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.*

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Defences Available to the Carrier – Limitation of Action
The Warsaw Convention (Article 29)
The Montreal Convention (Article 35)

- Article 29 of the Warsaw Convention and Article 35 of the Montreal Convention are in pari material on the 2 year limitation of action requirement which provides as follows:

"1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating the period of limitation shall be determined by the law of the Court seised of the case".

- Over the years Nigerian Courts have consistently applied the 2 year limitation requirement. In UTA French Airlines v. Williams Sanusi J.C.A followed the decision in Oshevire v. British Caledonian Airways Limited where it was stated at page 522 paragraphs B-C as follows:

"The limitation period laid down in Article 29(1) cannot be suspended or interrupted, even by agreement of the parties". See also UAC Ltd v. Global Transport S.A (1996) 5 NWLR (Pt 448) 291 at 300: T.J. Slomon v. African Steamship Co. Ltd 9 NLR 99 at 101, Prideaux Weffer 83 ER 282.