

# The Transportation of Animals by Air: Regulatory Aspects

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## I. INTRODUCTION

With the increasing number of passengers, transportation of animals also by air has mounted and lately there has been more interest in the well being of animals. Animals are different from ordinary cargo. They are more vulnerable and need special care, food and water. Moreover, there is a new phenomenon coming up, namely smuggling of animals in the cabin. When they escape or are discovered passengers sometimes panic.

Hester gives the following examples.

A young boy once brought his pet hamster on a flight. The boy carried the hamster in a kennel and stowed it properly under a main-cabin seat. However, sometime during the flight, the boy broke the rules and opened the kennel. His hamster escaped. Meanwhile, far away in first class, a female passenger saw what she thought was a rat. It just so happened that at the precise moment she screamed, the captain stepped out of the cockpit. Being a noble sort, he stomped the "rat" and deposited the corpse in a trash bin. Needless to say, the boy never saw his pet hamster again.

During an October 1998 Ansett Airlines flight from Melbourne to Perth, Australia, 6-year-old Khyll Hardy reached under his seat for a lost lollipop and was bitten by a snake. Reports say his mother noticed something was wrong when the boy started trembling.

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Medical tests later confirmed that Khyl had in fact been bitten by a taipan snake. Bite victims have difficulty breathing and can suffer rapid paralysis; without an antidote, the likelihood of mortality is high. Thankfully, this young passenger survived. Ansett grounded the A-320 aircraft in Adelaide, where seven snake catchers boarded to search for the creature. When their efforts failed, sniffer dogs were summoned. But the snake proved elusive for the four-legged posse as well. In the end, the airplane had to be fumigated. "We're absolutely satisfied that there is no snake on that aircraft," said Ansett spokesman Peter Young. He believes a passenger must have brought it on board.<sup>1</sup>

Another problem is that more and more companies give permission to take pets in the cabin, which causes medical problems in some passengers who are allergic, and consequently damages may be claimed.

Animals may be injured and suffocate if their containers are not adequately ventilated or when they are exposed to extreme heat or cold during the transportation. Dogs with a pug nose seem especially to suffer from the former problem. Dehydration may also be a problem. Occasionally airlines put animals on the conveyor belts used for ordinary luggage, which may terrify or hurt them.

## II. INTERNATIONAL RULES ON LIABILITY

Which rules are now applicable? According to the Conventions of Warsaw and Montreal, animals are transported as cargo.<sup>2</sup> As regards goods, Article 18, Paragraph 2, of the Warsaw Convention states that the period of carriage comprises the period during which the baggage or goods are at the charge of the carrier. The period of carriage does not include transportation outside the airport areas. Nevertheless, whenever this transportation takes place in the performance of a contract of carriage for

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<sup>1</sup> Elliot Hester, *Plane Insanity, A Flight Attendant's Tales of Sex, Rage, and Queasiness at 30,000 Feet* (2002).

<sup>2</sup> *Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air*; opened for signature on 12 October 1929. *The Montreal Convention on the Unification of Certain Rules for in International Carriage by Air*, ratified by the United States as the thirtieth country on 5 September 2003. The Convention entered into force sixty days after this latter date.

the purpose of loading, delivery or transshipment, any damage is presumed to have occurred during the carriage by air, subject to evidence to the contrary (Article 18, Paragraph 3).

Par. 2 of article 11 of Warsaw 1929 and Montreal 1999, provides that any statement relating to quantity, volume and condition of the goods does not constitute evidence against the carrier; except insofar as they have been checked in the presence of the consignor and mention has been made of this fact in the air waybill, or when they relate to the apparent condition of the goods. This is the weak point regarding the transport of animals. If the sender of the goods is not packing the animals according to the prescribed rules, the carrier is not obliged to open the package if it appears intact. The sender has, according to Warsaw 1929, the responsibility for the packing and has to pay his own loss / damage himself when a package, not conforming to the rules, is damaged.

Article 18 of the Warsaw Convention provides for a carrier's liability for destruction, loss of or damage to goods, if the occurrence causing the damage, etc. took place during the transportation by air.

Article 26 of the Warsaw Convention requires the shipper to give the carrier notice of damaged goods within seven days of receipt of the cargo. For loss, there are no rules because loss can be ascertained immediately. The compensation limits for cargo are mentioned in article 18, par. 1 of the Warsaw Convention. In both Treaties (the Warsaw and the Montreal Convention) the liability of the carrier for cargo in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogram, unless the consignor has, at the time when the package was handed over to the carrier, made a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. These limits, as prescribed by Montreal Protocol No. 4, included in the Montreal Convention, are unbreakable. Thus, there will be no litigation with respect to wilful misconduct in cargo cases.

In the case of *Parke, Davis & Co. V. BOAC et al.*, three successive carriers performed the transportation from Calcutta to Detroit. The court ruled that the carriers had performed in close cooperation and that the existence

of separate air waybills did not affect the legal obligation. The parties had regarded the carriage as a single operation.<sup>3</sup>

Paragraph 4 of article 22 Montreal 1999 gives an extension of Article 22 Warsaw 1929, namely: “In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained herein, 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.”

In the case of damage to a rare and expensive bird, compensation based on weight will be very low. In such a case, the owner would be wise to insure the animal or to pay the extra for carriage under a special value declaration.

However, sometimes the company refuses the possibility of the declaration of value as was the case in *Klicker v. Northwest Airlines, Inc.*<sup>4</sup> In that case a tariff limiting liability will not apply. Michelle D. Daniel mentions this interesting case in her article “Air Transportations of Animals, Passengers or Property”:

In *Klicker v. Northwest Airlines, Inc.*, the plaintiffs had shipped their valuable golden retriever, Sir Michael Robert, from Minneapolis, Minnesota to Billings, Montana. The airline required the Klickers to ship the dog in the cargo hold as “excess baggage”. Although the owners informed the airline of the dog’s alleged value (\$35,000), they were not permitted officially to declare the dog’s value or to pay extra charges for the shipping based on a declared valuation. The airline, however, did demand and receive double the ordinary excess baggage charge to ship the dog. During the flight the retriever died,

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<sup>3</sup> *Parke, Davis & Company v. BOAC et. al.*, New York City Court, 30 January 1958; 5 *Avi* 17,838; IATA ACLR, No. 63; USAvR 1958, p. 122; Zfl. 1959, p. 58.

<sup>4</sup> *Klicker v. Northwest Airlines*, 563 F. 2d. 1310 (1977).

and the Klickers brought suit. Both the Klickers and Northwest stipulated that the dog's death was caused by the airline's negligence in transporting him. The court rejected the airline's reliance on three tariffs. The court found the first tariff an absolute exculpatory tariff similar to the one in the Parke Davis case, to be unlawful, noting that the CAB had already declared such tariffs void as against public policy. The second tariff limited the airline's liability to \$500 for loss or damage of any baggage unless the passenger had declared a higher value of the property and paid an appropriate higher rate. The court held, this tariff did not apply since the Klickers were not allowed to declare a higher value. The third tariff relied on by Northwest provided that the airline would not accept "baggage the declared value of which extends ... \$5,000." The court concluded that this tariff, too, could not apply to the Klickers because the airline had refused to allow any declared valuation for the dog. The court stated that "if the airline erred in accepting the animal, the responsibility for the mistake falls on the airline, not on the innocent shipper". Thus, the Klickers were allowed to proceed with their suit without limitation of damages by the tariffs. In short, Klicker and other cases (with the exception of Parke Davis) illustrate that, if a tariff was reasonable, non-discriminatory, and the passenger was given the conscious choice whether to accept it or pay for higher coverage, the CAB and the courts would uphold it.<sup>5</sup>

The Convention of Warsaw did not give rules in case animals are destroyed. Michelle D. Daniel refers to a case in her article, which caused some excitement at the time. It regarded an air shipment of greyhound racing dogs from Shannon (Ireland) to Miami (United States). The dogs suffocated during the Boston to Miami leg of the trip. The owner of the dogs asked \$ 60,000 in compensation for lost the dogs' value and loss of estimated income from racing.

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<sup>5</sup> Michelle D. Daniel, "Air Transportations of Animals, Passengers or Property" (1986) *Journal of Air Law and Commerce* 497.

Delta said that the prescribed seven days notice was not kept but the court found that the seven-day period of written notice was inapplicable here, because the dogs were not damaged but destroyed.<sup>6</sup>

### III. OTHER INTERNATIONAL REGULATIONS

Apart from the rules of the Conventions of Warsaw and Montreal, two Conventions on animal air transport are applicable, namely the European Convention for the Protection of Animals during International Transport of 1968.<sup>7</sup> A Protocol was added on 10 May 1979, which came into force on 7 November 1989.<sup>8</sup> The second Convention is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 1973. More than 160 countries have signed this latter convention.<sup>9</sup>

The 1968 Convention is divided into two parts (chapters): general provisions and special provisions. The general provisions of Chapter I contain inter alia the following rules.

Article 1, par. 1 states that "Each Contracting Party shall apply the provisions governing the international transport of animals contained in this Convention." A definition of international transport is added.<sup>10</sup>

Article 1, par. 4 provides:

Each Contracting Party takes the necessary measures to avoid or reduce to a minimum the suffering of animals in cases when strikes or other unforeseeable circumstances in its territory impede the strict application of the provisions of this Convention. It will be guided for this purpose by the principles set out in this Convention.

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<sup>6</sup> See *Dalton v. Delta Airlines*, 570 F.2d 1244 (1978) at 1245-47.

<sup>7</sup> *European Convention for the Protection of Animals during International Transport of 1968* (European Treaty Series No. 65).

<sup>8</sup> Protocol of 10 May 1979 (European Treaty Series No. 103).

<sup>9</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora*. For the text of this Convention see <<http://www.cites.org/eng/disc/text.shtml>>. The full list of states parties is to be found under the heading "Member Countries" at <<http://www.cites.org/eng/parties/index.shtml>>.

<sup>10</sup> Chapter I, Article I, Section 2: "For the purposes of this Convention international transport is understood to be any movement which involves the crossing of a frontier. Frontier traffic shall however be excluded."

Article 2 sums up the categories of animals to which the air transport applies:

- (a) domestic solipeds and domestic animals of the bovine, ovine, caprine and porcine species;
- (b) domestic birds and domestic rabbits;
- (c) domestic dogs and domestic cats;
- (d) other mammals and birds;
- (e) cold-blooded animals.

Chapter II, part A contains the requirements for this transportation, which an authorised veterinary officer has to supervise. The Convention regulates also that animals shall be provided with adequate space and, unless special conditions require to the contrary, room to lie down (article 6). This is a very good provision as carriers may ship (for economic reasons) a too great number of animals on a single flight.

There are also detailed regulations about the construction of the means of transport (article 7).

When animals of various species travel in the same truck, vehicle, vessel, or aircraft, they shall be segregated according to species. Further, in compartments in which animals are transported goods shall not be loaded which could prejudice the welfare of the animals (article 7).

There are also rules about the loading of animals and about the cleanliness of the means of transport.

Part B has special provisions for the different means of transport as they are by railway, part C by road, part D for transport by water and part E for transport by air. The transport by air is covered by articles 35, 36 and 37 respectively saying, "Animals shall be transported in containers or stalls appropriate for the species. Some modifications of these requirements may be permitted if appropriate arrangements are made for restraining the animals (article 35). Precautions shall be taken to avoid extremely high or low temperatures on board, having regard to the species of animals. In addition, severe fluctuations of air pressure shall be avoided (article 36). In freight aircraft a type of instrument approved by the competent authority shall be carried for killing animals if necessary (article 37)."

Chapters III to VII of the Convention give rules about the different kind of animals as there are domestic birds, rabbits, dogs and cats, except those that are accompanied by the owner or his representative, other mammals and birds, and cold-blooded animals. It may be repeated that all these rules have to be supervised by an authorised veterinary officer.

Chapter VII deals with settlement of disputes. Article 47 states:

In case of a dispute regarding the interpretation or the application of the provisions of this Convention, the competent authorities of the Contracting Parties concerned shall consult with each other. Each Contracting Party shall communicate to the Secretary-General of the Council of Europe the names and addresses of their competent authorities.

If the dispute has not been settled by this means it will be referred to arbitration.

Chapter VIII contains the final provisions. Article 51 states that the convention shall remain in force indefinitely. Amongst others, the Additional Protocol of 7 November 1989 gives rules supplementary to the arbitration clause of article 47. Twenty-three states have ratified this Convention so far.<sup>11</sup>

On 18 March 2003, the EU Council of Transport Ministers submitted a Draft Revised Convention for the protection of animals during international transport.<sup>12</sup> The main aim of this revision is to fortify the Recommendation 1289 (1996) on animal welfare and livestock in Europe, which was the basis of the Convention.

The importance of the Convention should not be underestimated. The rules in this Convention contain useful provisions about temperature and ventilation and adequate containers during the transport of animals. As the countries fulfil these thoughtful and strict rules of this Convention, the welfare of animals will benefit very much. It would be desirable if this Convention would apply not only to European countries but also to all

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<sup>11</sup> For a list of the States that have ratified the Convention, see <<http://conventions.coe.int>> and enter ETS treaty number 065.

<sup>12</sup> Doc. 9743 of 18 March 2003.



countries in the world, directly or indirectly engaged in the transport of animals.

The second Convention is The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 1973. It protects only animals and plants, which are endangered by international trade.

CITES was drafted because of a resolution adopted in 1963 at a meeting of members of IUCN (The World Conservation Union). The text of the Convention was finally agreed to at a meeting of representatives of 80 countries in Washington, D.C., on 3 March 1973, and on 1 July 1975 CITES entered into force.<sup>13</sup>

CITES is an international agreement to which States (countries) adhere voluntarily. States that have agreed to be bound by the Convention CITES are known as Parties. Although CITES is legally binding on the Parties – in other words they have to implement the Convention – it does not take the place of national laws. Rather it provides a framework to be respected by each Party, which has to adopt its own domestic legislation to make sure that CITES be implemented at the national level.

The need for CITES is clear. Annually, international wildlife trade is estimated to be worth billions of dollars and to include hundreds of millions of plant and animal specimens. The trade is diverse, ranging from live animals and plants to a vast array of wildlife products derived from them. These include food products, exotic leather goods, wooden musical instruments, timber, tourist curios and medicines.

Not one species protected by CITES had become extinct as a result of trade since the Convention entered into force and, for many years, CITES has been among the largest conservation agreements in existence, with now 160 Parties.

There is a Regulation of the European Council of 9 December 1996 on this topic. This EC Regulation<sup>14</sup> gives a.o. definitions about commerce,

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<sup>13</sup> See <<http://www.cites.org/eng/disc/text.shtml>>.

<sup>14</sup> Regulation of the European Council No. 338/97, Official Journal L61, 3 March 1997, at p. 1.

transit and specimen. Article 16 mentions sanctions in case the requirements of the regulation are not adhered to.

The CITES Convention has 25 articles. As Fundamental Principles are mentioned in article II:

1. Appendix I shall include all species threatened with extinction, which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorised in exceptional circumstances.
2. Appendix II shall include:
  - (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilisation incompatible with their survival; and
  - (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in subparagraph (a) of this paragraph may be brought under effective control.
3. Appendix III shall include all species, which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.
4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.


The following articles concern the “Regulation of Trade” in these specimens. The most important are “Measures to be Taken by the Parties” (i.e. to penalise trade in and the confiscation of or return to the State of export of such Specimens [article VIII]), “the organisation of a secretariat and its functions” (article XII), “Trade with States not Party to the Convention” (article X) and “Resolution of Disputes” (article XVIII).

#### IV. RULES IN THE UNITED STATES

The US Federal Aviation Administration (F.A.A.) allows each airline to decide whether to allow a person to travel with a pet in the passenger cabin. The rules are about the same as in the above European Convention of 1968. Some airlines have additional procedures. The Animal Welfare Act protects dogs, cats and most other warm-blooded animals transported by air. The U.S. Department of Agriculture's (U.S.D.A.) Animal and Plant Health Inspection Service (A.P.H.I.S.) enforces this law.<sup>15</sup> A.P.H.I.S. shipping regulations and requirements help ensure that animals are well treated. Pet exhibitors, owners and other shippers are also affected by regulations established to protect the well being and safety of animals in transit.

Finally, the U.S. boasts preferential rules for celebrity animals. Celebrity animals are, according to Hester, defined as cats / dogs that are seen on popular television programs / commercials. They usually travel in the First Class cabin, but may travel in any cabin. They do not require pet kennels to be accommodated in the cabin. A celebrity animal may be seated at the owner's feet during take off and landing. A celebrity animal may travel in a passenger seat provided it is a celebrity animal not having a celebrity owner; the accompanying person has to provide the animal's own seat cushion and seat belts adapted for the animal are strapped to the seat.<sup>16</sup>

Overall, in theory, the rules for transport of animals are rather satisfactory. Nonetheless, there are two weak points. The adherence to and the enforcement of the rules is not always strict enough, and the rules are not well known. Thus, it is rather the practice that is not up to standard. The customs employees have to watch more closely and have to be alert that animals are not smuggled into the cabin.

Animals are worth caring for, not only for their economic value but because they are living beings and sometimes our friends. 

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<sup>15</sup> United States Department of Agriculture Animal and Plant Health Inspection Service, <<http://www.aphis.usda.gov/oa/pubs/travel.html>>.

<sup>16</sup> Elliot Hester, "Plane Insanity", <<http://www.planeinsanity.com/column200206.html>>, at n. 1.