

Liability towards passengers for airport terminal incidents

gbf Aviation Afternoon Workshop

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INTRODUCTION: SCENARIOS

- Physical damages
 - Slip & fall
 - Collision with vehicle (in the terminal or on the tarmac)
 - Food poisoning
 - Building collapse
- Delays
 - Security queues
- Material damages
 - Stolen baggage
 - Bag damaged during security screening/unduly confiscated
- Moral damages
 - Discrimination

PLAN

- I. The different actors (tortfeasors) and their respective liability regimes
- II. Contribution & indemnity
- III. Of some scenarios

I. THE DIFFERENT ACTORS AND THEIR RESPECTIVE LIABILITY

- A. Carriers
- B. The airport operators
- C. Security and customs
- D. Groundhandling agents
- E. Restaurants & shops

A. Carriers

1. Liability for personal injuries

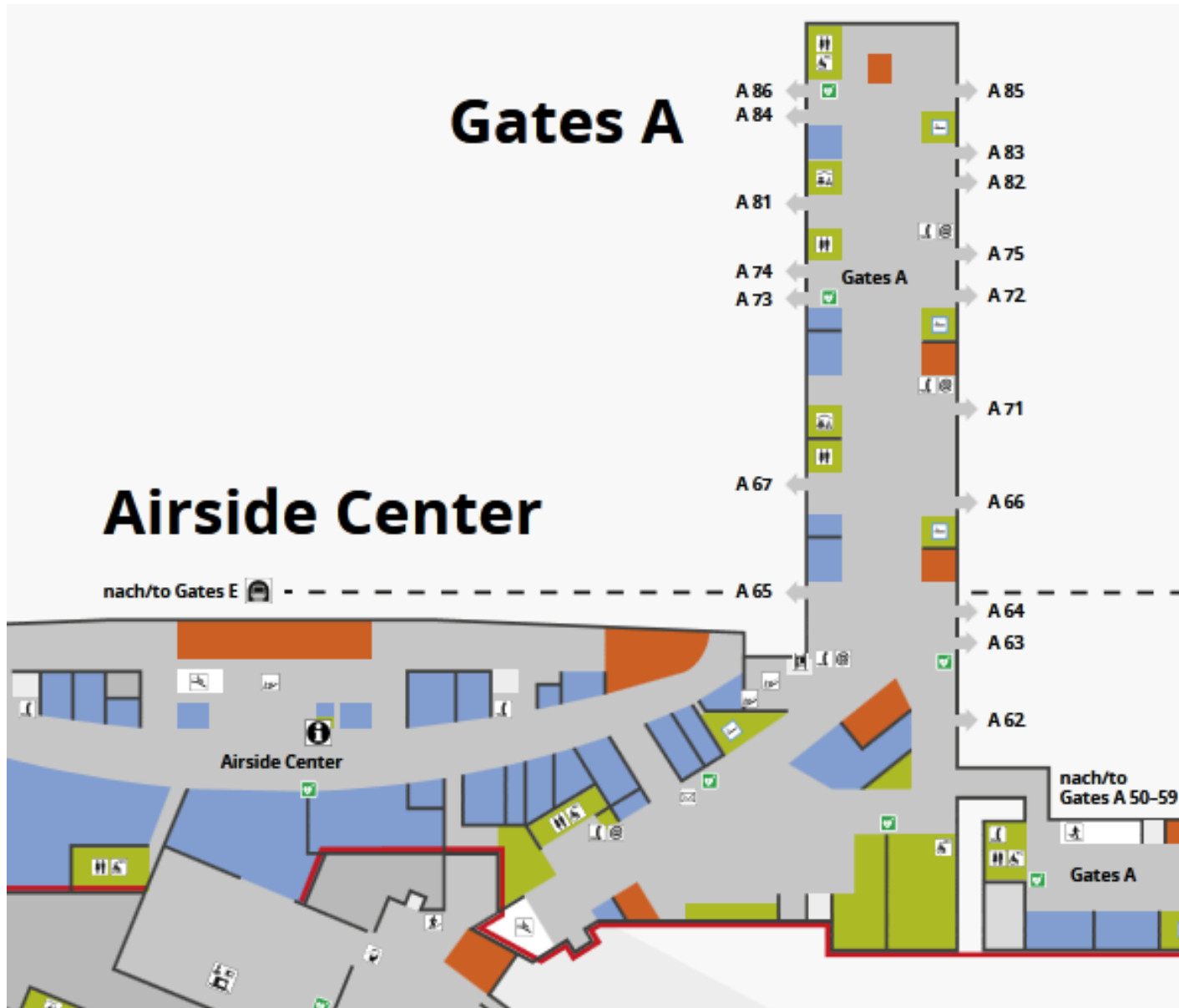
Montreal Convention 1999 – Art 17(1) MC

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**.

- ✓ death or bodily injury
- ✓ caused by
- ✓ accident
- ✓ on board the aircraft or whilst embarking or disembarking

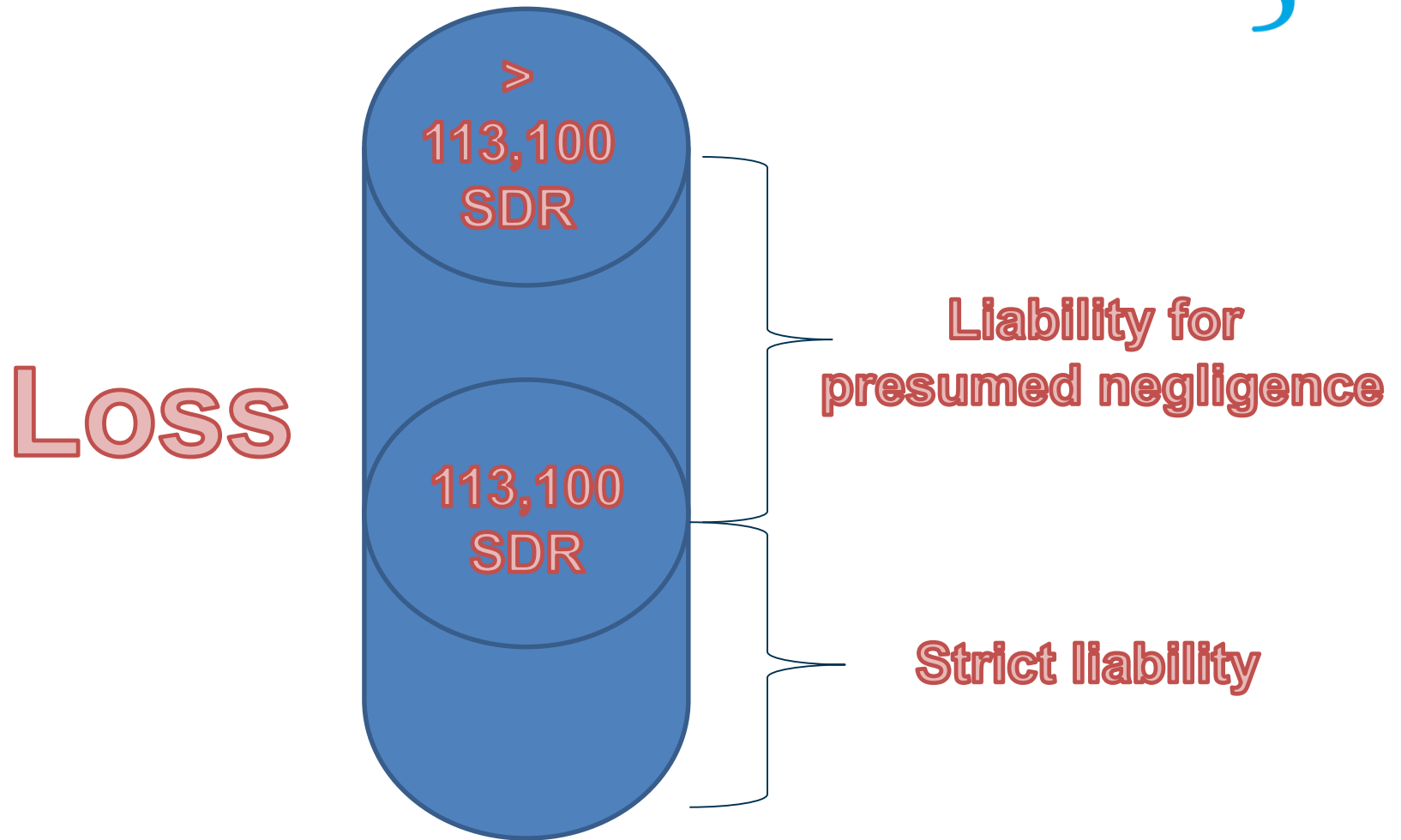
Period of liability: on board the aircraft, whilst embarking or disembarking

- US: tripartite test (Day v Trans World Airlines Inc, 2nd Cir, 528 F 2d 152):
 - passenger's activity
 - passenger' control
 - and passenger's location
- Aviation-related risks doctrine



‘No negligence’ defence: Art 21 MC

1. For damages ... not exceeding 113,100 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.
2. The carrier shall not be liable for damages ... to the extent that they exceed for each passenger 113,100 Special Drawing Rights if the carrier proves that:
 - (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
 - (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.



Contributory negligence defence: Art 20 MC

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability ...

2. Liability for baggage

Montreal Convention – Art 17(2) MC

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.

Limit of liability: Art 22 MC

- 1,131 SDR
- unless special declaration of interest
- ... or wilful misconduct

Liability period for checked baggage

... period within which the checked baggage was in charge of the carrier ...

- From baggage registration at check-in until redelivery on baggage belt

3. Liability for delay

Montreal Convention – Art 19 MC

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.

Limit of liability: Art 22 MC

- 4,694 SDR (for passengers)
- Unless wilful misconduct

EC Regulation No 261/2004

- Art 6: delay at departure -> right to care and to be reimbursed
- CJUE, Sturgeon v Condor, C-402/07: delay at arrival (if more than 3 h) -> compensation, unless extraordinary circumstances

B. Aerodrome operators

- Airports
 - public mission: federal concession (*'Betriebskonzession'*)
 - -> **state liability** -> Act on the responsibility of the Confederation and of its officials and servants (*Verantwortlichkeitsgesetz, 'VG'*)
 - **Art 19 VG**: liability of organisations which have been delegated public tasks
 - see Federal Administrative Court, 16.10.2014, A-7102/2013 (Engadin Airport); 04.06.2012, A-7918/2010 (Grenchen airport); 14.12.2009, A-358/2009 (Zurich airport)
- Airfields
 - Private: federal authorisation (*'Betriebsbewilligung'*)
 - -> **civil liability** -> Code of obligations ('CO')

State liability: Art 3(1) VG

- act or omission in the exercise of a public task
- **unlawfulness**
 - harm to physical integrity or property ('absolute rights')
 - or, in case of a purely economic loss or of tort by omission, breach of an official duty (incl *Gefahrensatz*)
- negligence not required -> strict liability
- (proximate) causation
- loss

See Federal Administrative Court, 13.11.2009, A-1269/2008

State liability – *leges speciales*: Art 3(2) VG

If liability for specific facts is dealt with in special legislation, the Confederation's liability shall be governed by these provisions.

-> civil liability

-> civil courts have jurisdiction

See Federal Administrative Court, 04.04.2011, A-5837/2010

Examples:

- Art 58 of the Road Traffic Act (strict liability of the car holder)
- Art 58 CO (strict liability of property owner)

C. Security & customs

- Security functions are assumed by
 - Airport operator (and possibly subcontracted)
 - Cantonal police
- Customs & border control: Federal Customs Administration

-> State liability

D. Suppliers of groundhandling services



According to the Federal Supreme Court, 15.04.2009, 2C_715/2008, No 4.4.1, suppliers of groundhandling services assume public tasks, by delegation of the airport operator.

On the other hand, towards passengers, groundhandling is ancillary to carriage.

-> **state liability**, based on the *Verantwortlichkeitsgesetz*
or
civil liability?

Be that as it may, for damages caused to passengers on board the aircraft or during embarking/disembarking, the handling agent may invoke the Montreal Convention:

Art 30(1) MC:

If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

-> Art 17ff MC apply in that case

E. Restaurants & shops

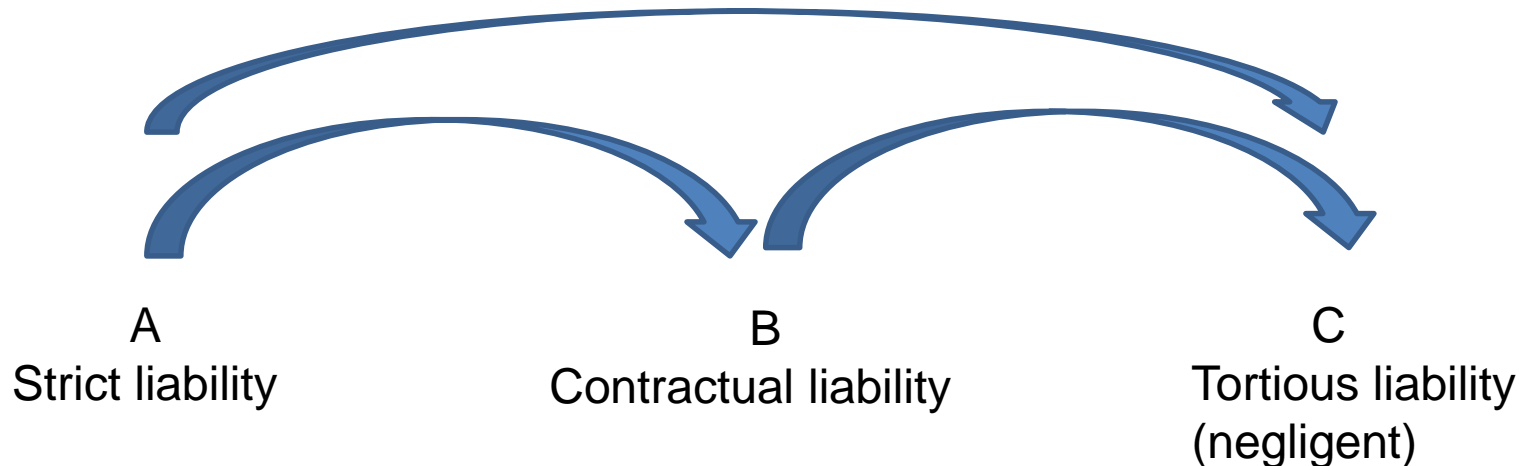
They do not assume public tasks (see Federal Supreme Court, 15.04.2009, 2C_715/2008, No 4.1).

-> **Civil liability**, art 41 or 58 CO

III. CONTRIBUTION & INDEMNITY

Art 51 CO – contribution among tortfeasors liable under different causes

- Towards claimant, jointly liable
- Internally:



IATA SGHA between carriers and handling agents

-> carrier shall not make any claim against the handling agent and shall indemnify it, unless handling agent committed wilful misconduct

III. OF VARIOUS SCENARIOS

- A. Bus accident on the tarmac
- B. Missed flight due to security controls
- C. Checked bag damaged by security

A. Bus accident on the tarmac

Accident sur le tarmac de l'aéroport

Genève Une collision entre un bus passagers et un «tapis» servant à mettre les bagages en soute a eu lieu samedi après-midi à Cointrin.



Photo d'illustration
Image: Lucien Fortunati

**Tribune
deGenève**

**Trump
n'a pas arrêté
de tweeter**

- Bus carrying passengers to the aircraft collided with a baggage loader and passengers were injured
- Bus and baggage loader were operated by the same groundhandling agent

Carrier



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Indemnity Art 8 SGHA
unless wilful misc. of HA

Art 51 CO
if wilful misc. of HA
(Art 8 SGHA)

Montreal Convention

Handling Agent



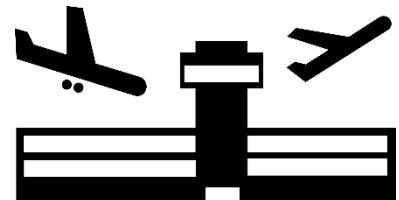
Passengers



Art 58 Road Traffic Act
or Montreal Convention

State liability???

Airport operator



No, see Federal Administrative Court, 14.12.2009, A-358/2009: under Art 19 VG organisations are only liable for damages caused by their managing bodies or employees.

B. Missed flight due to lengthy queues, security controls, etc



German decisions holding the airport operator liable for passengers who missed their flight

OLG Frankfurt a.M., 12.08.2013, 1 U 276/12. Search of a passenger's carry-on baggage caused him to miss his flight (lengthy search due to a lack of security personnel). Although the search was considered as lawful, the passenger was awarded compensation for the replacement tickets. The decision was based on the '*Aufopferung*' doctrine: a person who is required by an authority to make a 'special sacrifice' affecting its personal or property rights is entitled to compensation, unless that person has brought it upon itself.

How would such cases be dealt with under Swiss law?

- Under state liability, no compensation may be claimed from airport operator/police/customs unless they acted in breach of a specific duty of care (*'Schutznorm'*)
- To my knowledge, there are no regulation imposing a speedy handling of security matters, with the specific aim of protecting passengers

Carrier not liable to compensation under Reg 261/2004

C. Checked bag damaged by security

- ‘Event’ occurring whilst the carrier was ‘in charge of the bag’

-> carrier liable based on Art 17(2) MC

However, as the damage was caused by security, was the carrier still in charge?

- Baggage security checks are the airport operator’s responsibility and are usually not delegated to the police
-> airport operator is liable based on VG (jointly with carrier), unless it was necessary to damage the bag to perform a justified control (unlawfulness test)

Many thanks for your attention!

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