AN APPRAISAL OF LIABILITY REGIME FOR REDRESS AND COMPENSATION FOR VICTIMS OF AIRCRAFT ACCIDENTS IN NIGERIA

BY

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DECLARATION

I hereby declare that this research work entitled "An appraisal of Liability Regime for Redress and Compensation for Victims of Aircraft Accidents in Nigeria" has been carried out by me in the department of Private Law. The information derived from the literature has been only acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution.

Ahmed Ahmed Dauda **……..** **……....**

Signature **Date**

CERTIFICATION

This dissertation on titled "APPRAISAL OF LIABILITY REGIME FOR REDRESS AND COMPENSATION FOR VICTIMS OF AIRCRAFT ACCIDENTS IN NIGERIA" by Ahmed Ahmed DAUDA meets the regulation governing the award of the degree of Master of Philosophy in Law – Mphil of Ahmadu Bell University, Zaria, Nigeria and is approved for its contribution to knowledge and literary presentation.

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ABSTRACT

This reach work "entitled the liability Regime for Redress and Compensation for victims of aircraft Accidents in Nigeria." Revealed that aircraft accident is a recurrent decimal world over, and in particular, plane crashes result in a number of casualties, affecting both passengers and other non-passenger victims, hence the problems of who is a victim, when does a passenger embark or disembark an aircraft for the purpose of been compensated within the legal regime. The research work analysed relevant provisions of the convention for the unification of certain Rules, relating to international carriage by Air, known as Montreal Convention 1999, the Civil Aviation Act of Nigeria 2006 and various judicial authorities within and from outside the jurisdiction. The relevancy and the legal efficacy of the report of the Accident investigation report is equally an existing problem affecting the compensation regime. The research work argued for a rationality of compensating victims in the analyses of the relevant provisions dealing with compensation of aircraft accident in Nigeria. The research work reveals that only passenger victims are covered by the law for the purpose of compensation while other categories of victims are not known to law for compensation, particularly under the Montreal Convention 1999 which gave birth to the Civil Aviation Act 2006. Similarly, it also reveals that compensation status of passengers in a private jet and state aircrafts are not statutorily defined as the law completely silent on the liability of private aircrafts owners in Nigeria. The main objective of the research work using doctrinal approach is to appraise and analyse the existing legal frame works on the liability and compensation of passengers and non-passenger victims with the view of providing more pragmatic and flexible legal regime that encompass all categories of victims. Consequently, the research work among others finds that the current legal regime did not sufficiently cover all categories of victims in terms of compensation. It therefore recommends among others that Articles 17, 21, 28, 29, 30 of the Montreal Convention 1999 and section 48, 49 and 39 of the Civil Aviation Act 2006 be amended accordingly. The research work also recommend that the existing legal regimes required legislative overhauling to widen the present scope of the liability regime to cover more classes of victims and explicitly analyse key terms such as the words embarking and disembarking the aircraft and put an end to the constantly conflicting judicial interpretations of such terms. It also finds that the report of the Accident investigation report is rendered worthless by section 29 of the 2006 Act and that the desire of some victims to pursue higher compensation is rendered ineffective.

ABBREVIATIONS

AIB	Accident Investigation Bureau
All FLR	All, Federation Weekly Law Report
ATL	Air Transport Licence
ATOL	Air Travelers Organizers Licence
CAA	Civil Aviation Act
CAV	Certificate of Air Worthiness
CC	Chicago Convention
CM	Crew Members
DG	Director General
EA	Evidence Act
FAA	Federal Airport Authority Act
GV	Ground Victims
ICAO	International Civil Aviation Authority
LFN	Laws of Federation
MC	Montreal Convention
MPJFIL	Mordern Practice Journal of Finance and Investment Law
NAMA	Nigerian Airspace Management Act
NAMA	Nigerian Airspace Management Agency
NCAA	Nigerian Civil Aviation Authority
NCAR	Nigerian Civil Aviation Regulations
NMAA	Nigerian Metrological Agency
NWLR	Nigeria Weekly Law Report
PV	Passenger Victims
WC	Warsaw Convention

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STATUTES

Warsaw Convention 1929

Convention for the Unification of Certain Rules Relating to International Carriage (Montreal Convention) 1929

Civil Aviation Act 2006

Constitution of the Federal Republic of Nigeria

Evidence Act 2011.

Nigeria Metrological Agency (Establishment) Act 2003

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Research

As the world's fleet of commercial aircraft continues to grow and global airlines capacity steadily on the increase, Nigerian operators and the passengers are facing commercial conflicts emanating from injuries suffered by victims of air calamities as a result of loss of lives, properties or bodily and psychological injuries[1]. Aviation has become an integral part of the social economic life of nations. Nigeria by its size, population and position in the continent of Africa is naturally and strategically positioned as a natural hub in the West Africa sub region thereby constituting a market that would ensure and support sustained growth in air transportation[2].

Although, aviation is a known and understood transport system, notwithstanding the usual occurrence of aircraft accident the extent of patronizing air transportation is on increase globally, due to the readiness of individuals and business class to attend to their business and personal needs with dispatch anywhere in the world. When such disaster occurs, relations of the passengers or the victims themselves are legally entitled to some quantum of compensation for the loss of their loved ones and loss of their Luggage respectively. It is therefore not certain whether all relations of such victims could be paid the same amount as compensation as a matter of course or on legal demand by way of civil litigation irrespective of their positions. It is also not settled and not clears whether a Nigerian victim entitles to the same amount of compensation like a victim whose plane crashed in the territory of the United State of America[3]. The question becomes doubly important in determining whether victims or their relations have a cause of action either in tort, contract or insurance to demand for higher compensation in addition to what is statutorily provided.

1. Agada, J.A. O, Amana A.R. & P. Yer, (2009) Legal Frame Work For International Air Service Agreement Critical Analysis,*Journal of Contemporary Legal Issues*, Learned publishing and consultant *Ltd*, *Lagos*, *vol 1*, *PP140 – 146.*
2. Calistus E.U, (2006) introduction to Civil Aviation Law in Nigeria. Aviation Publishing and Consultancy Co. Ltd. Lagos, P11 3.
3. Kalu, A.U. addressing the claim and compensation for damages in aviation environment, corporate and private matters," delivered at the Nigerian Law Conference "Challenges of Legal Practice in 21st Century Nigeria under the auspices of the Nigerian law Reform Commission, (25th – 27th November,1997) Abuja, Nigeria.

It therefore becomes pertinent to examine and analize the possibility of remedying the injuries suffered by the passengers to their persons, lives and property with a view to examining the compensation regimes and to see why some victims are not compensated at all and why those compensated get the compensation so late?

The scope of who constitute victims in the legal parlance and in respect to carriage by aircraft is not conclusively settled within the popular words of embarking or disembarking an aircraft. This shall be examined in this research work for the purpose of ascertaining when a passenger and his relation can benefit from the compensation regimes.

The cases of Sudan Airways Vs. Mohamed Abdullahi,[4] *Kabo Air vs. Oladipo*[5] and *Cameroon Airlines vs. Jumai Abdulkareem*[6] among others explained variously how the superior courts in Nigeria viewed the liability regimes in aviation in favour of passengers against the carrier. In some of the decisions, it was resolved that a passenger can be entitled to huge damages on the condition that the passenger shall prove willful misconduct on the part of the carrier. This is in contradistinction with Article 22 (5 & 2) which makes carrier liable for higher damages where recklessness or negligence is proved.

The liability regime under the Montreal convention as contained under Article 17 and 21 is tied to the condition precedent inherent in Article 17 to the effect that carrier is liable only when the accident which caused the death or injury took place on

board the aircraft or in the course of any operations of embarking or disembarking the aircraft.

The provision of Article 17 raises dust as to the literal and technical meaning of embarking or disembarking an aircraft. Thus, it is therefore not clear as at when a passenger can be said to have commenced embarking or disembarking an aircraft. This will require judicial interpretations of the superior courts of Record. Accordingly, decisions of superior on this principle of law are examined to assert the pertinent interpretation of the word embarking or disembarking. It is equally pertinent that the contentious areas of the Montreal Convention 1999 as reflected in the civil Aviation

[4]Act (1998) 1 NWLR, (pt 68), p 271

5. (1999) 10, NWLR, (pt 623) p 517

6. (2003) 11, NWLR, (pt 830), p1

2006 are examined particularly those related to the liability and compensation regimes i.e. Article 17, 18, 19, 20, 21 and 22 of the Montreal Convention. Section 48(1) of the Civil Aviation Act 2006 on compensation in relation to air transport carriage and S48(2) thereof are examined on both international and domestic carriage. The section in a whole makes the compensation regimes provided in the Montreal Convention applicable in both national and international carriages by air in Nigeria and same is applicable *mutatis mutandis.*

Another cogent area to be analized in this work is the determination as to when a passenger sustained an injury in an aircraft to earn or entitle him/her to damages in his favour against the carrier i.e. what is the coverage of the doctrine of embarking or disembarking the aircraft?. Article 17 of the Montreal Convention states:

> *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*

The operative word in this provision is “embarking or disembarking”. The word embarking or disembarking ordinarily means when the passenger is in the processes of entering or disengaging from the aircraft which he/she boarded.

However Article 17 (2) on the damage sustained in the case of destruction or loss of damage to checked baggage says:

> *... 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 charge of the carrier.*

The operative word in this sub-section rather than embarking or disembarking is ***“the period when the checked baggage was in charge of the carrier”***. Judicial interpretations, literal and ordinary meanings of the words embarking or disembarking as well as in charge of the carrier shall be examined to ascertain whether a passenger who breaks his leg or hand while queuing to enter an aircraft and other similar scenario can be compensated within the confine of embarking or disembarking or not. Similarly, the provisions of Article 17 would be analysed with a view to ascertaining whether a passenger in a state / government aircraft shall be compensated or not simply because he/she is not a paid passenger.

The research work is therefore strategically designed to critically examine the extent of liability and modus of compensation payable to victims or their relations. This becomes expedient considering the fact that the relevant provisions of Warsaw Convention 1929 and subsequent International legislations, including the Montreal Convention 1999 only made provisions for compensation to victims of air craft accidents in event of death, injury or loss of goods without considering status of individuals, their education, responsibilities and earnings of individual victims which differ and drastically distinguished one victim from the other[7].

1.2 Statement of the Problem

Every passenger who suffers personal injuries to his person, or body or to his mind, or relations of those who lost their lives as a result of an accident that resulted from a plane crash should be allowed to enjoy the fruit of the legal principle that "No wrong goes without remedy" hence the question as to whether this remedy should be pursued in the light of claims against the insurer of the carrier in the Insurance law by way of third party claim, or should be pursued in the light of tort of negligence in the law of tort vis-à-vis the statutory duty of care owed to the passengers by the carrier, or in the light of the damages resulting from breach of contract of carriage by the carrier. It is equally not clear the scope of who can benefit from the compensation regimes and what make them eligible to the benefit hence the statement of the problems.

Accordingly, the following Statement of problems called for attention in this research work:

1. The provision of Article 17 of the Montreal convention created series of vaccum which required judicial interpretations to strengthen the protection of the passengers victims and reduce the level of the statutory liability of the carriers for example, the statement, "embarking and disembarking the aircraft", is vague in nature that both the carriers and the passengers have to compete for defences as to whose benefit the statement serves[8].

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7. Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal) (1999), which was domesticated under Section 48 of the Civil Aviation Act 2006.

8. Such as Nigerian Airspace Management Act, cap N90, Laws of Federation 2004 Federal Airport Authority Act 1999, cap C13, Laws of Federation 2004 , Nigerian Metrological Agency Act cap , Laws of the Federation 2004, and Sections 147 and 148 of the 1999 Constitutions

It is a common practice in the aircraft operations that the ladder that connected to the aircraft on the ground belong to a company different from that of the aircraft owner. A passenger who slip off and got wounded in the course of climbing the ladder to enter an aircraft, cannot be said to have sustained the injury while embarking the aircraft simply because, the ladder is

not part of the original component of the aircraft. If however, it is construed that such a passenger is already embarking the aircraft, a passenger who sustained injury inside the airport on his way to board an aircraft can also be constructed to have sustained same in the course of embarking the aircraft.

2. A number of aircraft accidents have been recorded in Nigeria of which victims were not compensated within a reasonable time or inadequately compensated due to one reason or the others. This research therefore will examine the extent of liability and quantum of compensation claimable by victims of aircraft accidents or their relations for the purpose of being compensated beyond what is statutorily provided in various legislations. It has not equally been settled whether on the basis of doctrine of strict liability or breach of duty of care, an airline operator or the manufacturer or the Regulatory Authorities could be made to face the wrath of law in tort, or whether on the strength of breach of contract, the carriers could be held responsible in damages in favor of their victims.

3. It is one factor to know ones right, it is another factor to be able to pursue the right using the best and most appropriate medium. Determining a cause of action is a task on an Aviation Solicitor who has the duty to advise his client on his legal rights and to file a civil suit accordingly where necessary. It is therefore not certain whether such Solicitor should advise his client to pursue the cause of action in tort for negligence, breach of contract of carriage or Insurance Claim as well as the quantum of damages which is claimable by its victim.

4. Investigative report especially in an adversarial system of justice is aimed at pointing out lapses or apportioning blames with recommendations for subsequent prosecution or remedies. This spirit is not in consonance with Section 29 (14) Civil Aviation Act 2006 which categorically rendered inadmissible

in evidence Air craft accident Investigation Report conducted by a Statutory Investigating Authority. It is equally considered part of the inherent problems (particularly in the absence of any Judicial Authority), the conflict between Sections 102, 105, 85, 86, 87, 88, 89 Evidence Act[9] which considered the Report of the Investigation Bureau on Accident as a public document, Section 91 Evidence Act and Section 29(14) of the Civil Aviation Act 2006 which rendered the document inadmissible. This conflict is of importance considering the fact that the two conflicting Legislations are Acts of National Assembly.

5. It is also not certain whether passengers on board of state aircraft who are not paid passengers as well as ground victims who sustained injury as a result of an aircraft which fall on ground or on the property belonging to a non-passenger are subject of the same liability regime.

1.3 Research Questions

However, within the confine of this research work, the following questions are pertinent and called for adequate answers as research questions.

1. What is the position of the Nigeria Superior Courts on the extent of compensation regimes to victims of aircraft accidents.
2. What are the compensation regimes in Montreal Convention, as well as the relevant provisions of the Civil Aviation Act 2006.
3. Whether or not these statutory compensation regimes are adequate, and whether a victim can pursue and secure higher compensation.
4. To what extent are the non-passengers victims on the ground are protected in event of death, injury or loss of their properties.
5. What are the parameters to justify claim for higher compensation and what are the causes of delay in paying compensation to victims of aircraft accident.

6. How can the probative value be injected in to the Accident Investigation Report conducted by the Accident Investigation Beureau, A I B, a statutory Agency established under the Civil Aviation Act 2006.

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9. Evidence Act, cap E14, Laws of the Federation 2004, Government Notice 103, Vol. 98, signed into Law on the 22nd July 2011 by the President and Commander in Chief of Armed Forces of Nigeria.

1.4 Aim and Objectives of the Research

Consequently, this study aims at realizing the following objectives:

1. To examine the legal framework on the extent of liability and compensation regimes available in the aircraft accident to determine whether higher Compensation can be demanded by the victims or their relations.
2. To analyse the legal framework relating to Aircraft Accident victims who are desirous of higher compensation and the extent of the compensation that can be demanded.
3. To examine the challenges, prospects and ways for a viable options for Nigeria considering some area of deficiencies in the Civil Aviation Act 2006 in contra distinction with some decision of the superior courts[10]
4. To examine the legal status of Ground victims, gratuitous passengers and properties on ground which are destroyed and damaged as a result of the air craft accidents.
5. To examine the rationale of the non – probative value of the Accident Investigation Bureau's reports
6. To examine the compensation status of victims of private Jet and gratuitous passengers.

1.5 Scope of the Research

This research is limited in scope to issues on aircraft accidents. To this end, the research work is expected in its scope to cover conceptual discourse and principal terms in aviation law and air transport accident, analyse legal framework for liability regimes in aircraft accidents with a view to know who is a victim and the extent of the compensation entitled to within the present legal regimes and the judicial attitudes of Nigeria Courts towards aviation cases particularly with regards to accident and compensation or liability thereof.[11]

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10. See the case of *Cameroun Airlines vs. Mr. Mike E. Otutuizu* (2011) All Federation Law Report P 1260 at 1267 where the Supreme Court was of the opinion that once a breach of contract of aviation is established damages follows as consequence.

11. *Harka Air Services Ltd vs. Emeka Keazor Esq.* (2006)1, NWLR, Part 960, Page 160 at 161-190, *Cameroon Airlines vs. Miss Jumai Abdul Kareen* (2003)II NWLR, Part – PP 1 – 22, *Ibidapo Joseph Vs Luthansa Airline*

Notwithstanding the limitation of the research scope, it will cover issues relating to negligence, breach of contract in relation to Aircraft victims as well as damages and compensation payable to Aircraft Accident victims. It is noteworthy that likely procedures and methods of pursuing various causes of actions by victims of the crash are equally to be examined.

1.6 Research Methodology

The Research method employed is doctrinal.[12] i.e. reviewing existing literatures such as statutes, conventions, text books of learned authors, Articles published in the National and International Journals, e.t.c. Decisions of Courts of Records are to be analysed in the light of the liability and compensation regimes for victims of Aircraft Accident in Nigeria to enable the researcher to arrive at answers to the research questions so formulated.

1.7 Justification or significance of the Research

This research is justifiable as same is targeted at benefitting the real passenger victims, the ground victims, the air carriers and even the insurance company who ultimately come in to settle claims on behalf of their client carriers.

If the liability regime is restructured in tune with this research work, the passengers would not more be tied down to the 100,000 SDRs contained in the Montreal Convention and the Civil Aviation Act 2006, and will be able to assert claim for prompt payment of the compensation within the time frame of the laws or within the reasonable time.

On the part of the ground victims whose claim for compensation is clearly uncertain within the present liability regime, they will either be able to use the report of the Accident Investigation Bureau to press home their claim for compensation or they demand and get a definite monetary applicable to the passenger victims in the present regime. The carriers are designed to benefit from the outcome of the research work as the likely amendment of Article 17 of the Montreal Convention will limit the scope of their liability to the victims as the owners of the ladders used in embarking the aircraft will have to share from the liability.

The research is further justifiable in that there will be need to review the present legal regimes on the liability outcome of which will engender legislative and policy amendment of the current regime in time with the findings and recommendations of the research.

12. Theorizing without considering the practical consequences as defined by Y. Abdi, (2001) Introduction to research, methodology, Tamaza publishing Ltd, Zaria, p.3.

1.8 Literature Review

It is trite that previous literatures on the subject matter of the research are trite, some of such literatures are examined with a view to press home the extent of their relevancy to the subject matter of the research.

A published Article, Salu, A.O[13] examined various legal regimes on the extent of liability of carriers to their passengers and pointed out how Warsaw Convention can be said to be beneficial to both passengers and the carriers in the sense that the passengers were relieved of the burden of proving that the carrier was at fault and the carriers on their part knowing the enormity of the risk in the operation ensure that their operation is

adequately insured against such risk. The Author after critical examination of the case of Canadian Pacific Airlines Ltd. vs. Montreal Trust Co. Robert Jack Stampleman,[14] in contra distinction with the plight of Nigerians who lost their lives in the ADC Flight 0086 in 1996 was quick to conclude that if victims of aircraft accidents in Nigeria could go to court to claim damages either in contract or tort, Nigerian Court could be swayed to award higher damages than what the Air carriers in Nigeria usually offer to the passengers or their relatives. The learned author indeed made remarkable Submissions, but did not in any way appraised how such higher form of damages can be claimed in contract or tort?. Calitus E Uwakwe[15] asserted, that between 20th November,1968 when the 1st Civil Aircraft Accident occurred in Nigeria and 10th December, 2005, when Sosoliso Airline Aircraft (flight No. 1145) crashed at Port Harcourt International Airport, Nigeria had witnessed a total of 74 aircraft accidents involving Civil Aircrafts with total of 1198 lives lost[16].

This writer S. Alu X – rayed the air transport operation business in totality criticized the apparent inadmissibility of the aircraft Accident Investigation Report as inherent in the Civil Aviation Act 2006[17]. He opined that the Plaintiff who is desirous to using the report in claiming damages in Civil Litigation should plead the principle of "res – Ipsa loquito" [18] to be able to shift the burden of proof to the Defendant bearing in mind the inadmissibility of the documents.[19] The author did not really consider Section 29 (14) of the Act in contradiction with Sections 102, 105, 85, 86, 87, 88 and 89 of the Evidence Act[20] which set-down the grounds for the admissibility of documentary evidence in Civil cases of this nature. Further, the Author having examined Article 17 of the Warsaw Convention,[21] itemized the essential requirements needed to establish liability of the carrier as follows:

a. The passenger must have been wounded or suffered bodily injury.
b. The injury must have arisen from an accident.

c. The accident must have arisen on board of the aircraft or during the course of embarking or disembarking.

He also considered passengers ticket as an important document of carriage and stated that the absence, irregularity or loss of ticket will not affect the existence or validity of the contract of transportation, but if a carrier accepts a passenger's ticket, such a carrier will not be able to avail himself of the right to exclude or limit the liability.[22]

The Civil Aviation Act 2006[23] is a major statute on aviation in Nigeria, the Act in its copious provisions put into contemplation current global trend in Aviation transportation particularly in relation to liabilities of the carriers, rights of the passengers and their safety and security. Thus, Sections 1, 2, 29, 32, 33, 34, 48, 55, 63, 71 & others are Germane and pertinent to this research work as they are to be variously and critically examined in relation to the reference topic of this research to ascertain the extent of their provisions for the purpose of satisfying the liability regimes for redress and compensation for victims of the aircraft accidents or their relations.

M.N. Shaw,[24] examined the Montreal Convention 1999 and asserted that air carriers are strictly liable to their passengers in event of accidents for the first 100,000 Drawing Right of proven damages. The carrier according to him cannot avoid liability for this as a strict liability caused by its negligence. This opinion of the learned author is in consonance with section 48(3) of the Civil Aviation Act 2006 which required the air carriers to make an advance payment of 30,000 US Dollars which is thirty Million

17. However this is varied from a certified update of the total plane crashes so far recorded in Nigeria as complied by the Aviation library, college aviation Zaria attached which statistics from July 13th 1968 up to 22nd July,2008 shows 36 crashes.
18. See Section 19 (14) Nigeria Civil Aviation Act 2006.
19. Which was defined by the Supreme Court in Nigerian Port Authority vs. Becham Pharmaceutical Ltd (2012) Vol. 12 MJSC (Pt. II) 160.
20. Ibid at Note 6.
21. Which renders the carrier liable for damage sustainable in event of the death or injury of a passenger on board of the aircraft.
22. See Article 3(2) of the Warsaw Convention.
23. An Act of National Assembly Federal republic of Nigeria Official Gazette, Government Notice No. 45, Volume 96. which repealed the Carriage by Air (Colonies, Territories and other Trust Territories) Colonial Order 1953, Civil Aviation Act CAP 51 Laws of Federation 1990, Civil Aviation (Amendment Act 1999 and Nigerian Civil Aviation Authority) Established Act. 49 1999 Section 77 retained bye Laws, Orders and

Naira, within thirty (30) days of the Accident to the natural person or such other persons who are entitled to claim compensation on behalf of a deceased passenger.

Accordingly, the liability of the carrier is considered strict liability to the extent of the amount so provided by the Act. There are Nigerian Judicial Authorities[25] where the Nigerian Courts made various pronouncements on carriers liability. The Court of Appeal in a case,[26] held that Article 17 of the Warsaw Convention imposes an absolute liability upon the carrier for all personal injuries regardless of the fault if the accident which caused the damage so sustained took place on board of the aircraft.

The liability, according to the Court is however excused by Article 20(1) if the carrier can prove that it has taken all necessary measures to avoid the damage or that it was impossible for it to take them. It therefore follows that the burden of proof is placed upon the carrier to discharge. Accordingly, the Court stressed that Article 25 steps in to the disadvantage of the carrier and provides that the carrier shall not be entitled to avail itself of the provision of the Convention which exclude or limit its liability if the damage is caused by its willful conduct.

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24. (2005) international Law Cambridge University Press P 472.
25. Such as the case of Cameroun airlines. Jummai Abdulkareem 2003 Volume 11 NWLR part 830 P 1, Sudan Airways Company Ltd vs. Abdullahi (1999)1, NWLR Part 532, P 156, Ali vs. CBN (1997)4, NWLR Part 498, P 192, Kabo Air Ltd vs. Oladipo (1999)10, NWLR Part 623, P 517 and Dr Oladipo Maja vs. Salawu Oke (2013)2-3, MJSC (Part)P 31at 41.
26. In the case of Harka Air Service (Nig) Ltd. vs. Emeka Kearzor Esq. Ibid, at P 190

The Court further observed that the Legislation referred to Article 22(1) on limitation and Article 20(1) serves a significant purpose of protecting international air carriers from the burden of excessive claims connected with the loss of aircraft under circumstances which caused the disaster because of the death of all on board and destruction of the aircraft.

It worth mentioning therefore, that despite several aircraft accidents in Nigeria, judicial pronouncements on the liabilities of the carriers and the rights of passengers therein are not frequently tested in courts. Thus, attitudes of Nigerian Judges and Nigerian Courts in this area are scrutinized through some judicial pronouncements of Courts of high status in cases such as Cameroon Airlines vs. Abdulkareem[27] (on when damages may be awarded at large for loss arising from carriage by air), Joseph Ibidapo

vs. Lufthansa Airlines[28] (on the applicability of Warsaw Convention), and that of Harka Air Services Ltd vs. Keasor[29] would be examined in relation to the aims of this research work.

The learned author of, air travel how safe? [30] considered problems of getting useful and valuable information sufficient for passengers to prosecute the carriers and promptly pointed out that pilots and the perception of their vulnerability to prosecution in criminal Courts after involvement in serious accidents is a factor that may affect their future cooperation in Accident Investigation and inquires and the continued availability of safety information important for prevention of future accidents. The likelihood of criminal prosecution according to the learned author makes pilots to reconsider their earlier cooperation to providing possible information about an Accident.[31] The position of this learned author can be punctured on the ground that Annex 13 of the Chicago Convention[32] clearly stated that the objective of Accident Investigation is the prevention of incidents and not to apportion blame or responsibility, hence, chapter one of annex 13 of Chicago Convention.[33.] It is therefore, not certain whether surviving pilots in an

27. Reported in (2003) 11, Nigerian Weekly Law Report, Part 830 at Page 1
28. Reported in 1994 Nigeria Weekly Law Report, Part 498 at Page 355
29. (2006) NWLR Part 960, page 160
30. Laura Taylor (1988) Blackwell, page 236.
31. See Section 55(1) 7(2) Nigeria Civil Aviation Act 2006.
32. See Section 29(11) (e) (12) of the 2006 Acts which domesticated the provision of Annex 13 of the convention on International Civil Aviation in 2006.
33. International Standard Recommendation practices which described accident as an occurrence which takes place between the times any person boarded the aircraft and the time such a person disembarked

aircraft accident are competent and compellable witnesses under Section 175(1) of the Evidence Act, and whether witnesses Summons can be issued to compelled them to attend Court to testify on an accident. J.M Thompson[34] appraised causes of accident in transport operations and posited that many researchers contend that most accidents are as a result of human error.

According to him, the airline pilot who overruns the runaway during landing at an unfamiliar airport and caused accident cannot escape the blame hence human error. The writer also identified inherent faults in the engineering and infrastructure as other likely factors that can cause accidents in air transportation. The position of the Learned Author is questionable to the extent that most accidents are attributed to human error because human beings plays less roles among all likely factors in all aircraft accidents

as most of the accidents reports by the aircraft accidents Investigation Bureau attributed much blames on mechanical faults rather than human errors on the part of the pilots or any of the crew on board of the aircrafts[35]. This is purely unacceptable as the mechanical errors so attributed to the accidents are often facilitated by negligence acts rather than human errors as positioned by the learned author. The authors of Charles Worth and Percy on Negligence[36] are of the view that a duty to take care imposed by law or can be created by contract or trust.

Accordingly, there are three component elements which are necessary in establishing negligence namely:

a. Existence of a duty to take care.

b. Failure to attain that standard of care.

c. Damage which is casually connected with such breach.

They further posited that, the choice to sue either in tort or contract is on the Plaintiff who they said considers the time when the cause of action accrued or arose in either contract or tort and the relevant provisions of statute of limitation in making such

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34. (1974) Modern Transport Economics, Penguin, London, P.135-145.
35. For example See the report on the accident of the Network Aviation Services, partanaroa, P68C aircraft, registered as 5N-ATE which crashed at Igbogbo Village, Ikorodu, Lagos on 16th June, 2001, the Chanchangi Airlines Boeing 737-200 Registered as YU-ANU which crashed in Kaduna on 22nd Febraury, 1998 and that of Sosoliso Airlines DC9-32 Registered as 5N-BFD which crashed at Port-Harcourt on 10th December, 2005.
36. (1983) London and Maxwell, eleventh Edition, Pg. 5-165.

a choice of tort of negligence in general without considering how the general principles of tort of negligence can be applied in aviation cases.

Most of the accident reports by the Aircraft accident investigation Bureau attributed much blames on mechanical or administrative faults than human error on the part of the pilot or any of the crew members on board of the aircraft.[37] This is purely unacceptable hook line and Sinca as the mechanical errors so attributed to the accidents were facilitated and masterminded by human factor. For example, the accident investigation report on Sosoliso Airline in 2006 classically pointed out that the operational/serviceable airfield light were not put on against the usual practice wherein the airport airfield lights are switched on in the night (1800 hours – 0600 hours (UTC)

and off in the day hours except on special request by pilot, or when the controllers observe deteriorating trend of whether condition which was not the case in the case of the Sosoliso Aircraft. The writers of the Legal frame work for International Air Services Agreement: a critical analysis[38] appraised and analysed the legal frame work of the air transport service Agreement in Nigeria and the globe. The authors analysed the pre-1944 Conventions, the Chicago Convention of 1944,i-e the two Freedom Agreement, the standard format for Bilateral Air Service Agreement namely: Chicago type, British type and Barmuda type of Agreements. They also analysed the Multilateral Air services Agreements, open skies Agreement e.t.c.

Although, the position of the learned authors is appreciative, to the extent that an injured passenger in an aircraft accident may sue either in breach of contract or tort of negligence against the air transport carrier, the writers did not deem it fit to examine how such agreement impacted on the air transport services in Nigeria with the view to see the relationship between the air carriers and the passengers which would have led to the consequences of the contract of air carriage. Accordingly, there is lacuna in the presentation. The author of Nigeria's new Aviation Laws: a case of haste in Legislation,[39] took a glossary look at some legislations on aviation namely, the Nigerian

37. Ibid.

38. J.O Agada, AR, Amana and P Yer,etel (2009) Journal of Contemporary Legal Issues, (Publication of Nigerian Bar Association,Idah Branch Kogi State). JCLI Vol. 1, No. 1, Page 140 – 146.

Airspace Management Agency (Establishment, etc) Act (NAMAED), the Nigerian Civil Aviation Authority (Establishment, etc, Act (NCAAED)[40], the Federal Airports Authority of Nigeria (Amendment) Decree (FAANAD) e.t.c. The author was quick to point out that the legislations were made in a haste and did not address salient issues in aviation transportations services in Nigeria. The writer though was right in his submission but the write up was not expansive enough as the writer did not deem it fit to compare and contrast the reviewed legislations to ascertain how the legislations dealt with operations of air transport system in Nigeria hence the vacuum. S.O Oduselu[41] critically analysed the accident investigation Bureau in terms of its authority, mission statement, functions, agenda, safety recommendations, flight recorders, accident disaster

victims, site Hazards, etc in his bid to explain how the Accident Investigation Bureau under takes its statutory duties of investigating aircraft accidents in Nigeria.

However, the power point presentation by the erudite Chief Executive Officer as articulated as it was, left the issues of use or utilization of the investigation Report, the extent of liability of the carriers and other stakeholders and indeed compensation of the victims of the accidents unanalyzed hence a serious lacuna. The Author of introduction to the Law of Carriage of Goods analysed what a common carriers by air is all about, the international carriage, successive and actual carriers and loss or damage to cargo and luggages. The author also considered the legal consequences of absence or irregularity of the airway bill, the position of airway bill as a receipt and evidence of air carriage contract and its legal status as a contractual instrument. The learned author only pointed out and analysed the constitution of contract of carriage by air and its constituents without considering the consequences of failure of the carriers or any other person associated to the carriage processes whose failure negatively impacted on either the goods or owners of the goods as passengers.

In the same vein, the National Civil aviation policy of Nigeria 2013 will equally be reviewed with particular reference to the subject matter of the research. Part 4 of the policy specifically provided for aviation safety and security which substantially covers safety regulation oversight safety management accident investigation and prevention, communication navigations, airport security management and airline operations security management.

40. The Commissioner (CEO; Accident Investigation Bureau), (10th March 2008) a presentation to the Nigerian College of Aviation Technology, Zaria on accident investigation Bureau (AIB), Pages 7 – 5.

41. D.A Glass & C Cashmore (1989) Sweet & Maxwell, London, Page 212-219

The writer of the civil liability for pure Economic Loss under American Tort Law[42] analysed the act of defective products and stated that American courts imposed liability for negligence and strict liability in tort on manufacturers and distributors of defective products in cases in which the products has caused physical harm to persons or properties. The position though statutory, but can be punctured considering the patent lacuna in the civil aviation conventions and statutes wherein the liability of the manufacturers are not clearly enshrined to ground the manufacturers liable for defective product when same is established.

The writer of developing a contingency plan for extended ground delay at Lambert International Airport[43] appraised the aviation management curriculum stressing the need for a team of work in the aviation transportation system. He also stressed the different ways through which irregular operations can sufficiently be handled and addressed in the aviation sector to avert aircraft calamity.

As expansive and theoretical this Article was, the writer was expected to also expanciate on the extent of the liability of the team workers in event of their joint or several failure to effectively handle their various roles which eventually lead into aircrash and injuries or death of passengers and other victims.

The writer of civil liability regime for the Air operator and aircraft operator,[44] examined relevant Articles in the Administrative Regulation No. 11/2014 and No. 19/2011 vis-à-vis the liability of the civil air operators in Macao, SAR, where the carrier of air operator is expected to pay the sum of N113,000 SDRS as compensation for lost of life or death in the aircraft accident. The writer established that once the passenger obtained air ticket or the air operator has accepted an order from the cargo agent, the contractual liability is established and the payment of compensation becomes an issue.

The writer though appraised the liability regimes, he did not analyse what makes one to be a passenger outside the purchase of air ticket or an order from the Cargo agent. Consequently, the writer did not contemplate the gratuitous passengers and the ground victims in his scheme of liability regime hence the vacuum to be filled in this research work.

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42. Herbert Bernstein Vol. 46, 1998 American Journal of Comparative Law, p24

43. Jiaoma, Brian D Kinsey and Rose Agnew. Vol. 2, October 2015, Journal of Aviation Management and Education, p41

The writer of the elusive low cost carrier effect in the trans- Atlantic air line market identified the low cost carrier as a cause for reduction of air fares offered by full service carrier in the USA. The writer examined the consequences of domestic deregulation, consequences of domestic deregulation, consequences of international deregulation, defendant variables, and independent variables, all with a view to arrive at the conclusion that low cost carriers are attracted to routes where airfares are inordinately high and that their entrance does not pull down the fares of the full service carrier.

The writer though posited that the cognitive process of those who seek cheap domestic flight is radically different from those seeking the Atlantic cheap flight, he did not conclude or examined the after marth of a crash which occurred whether the flight is cheap of costly which after marth is fundamentally the same and whether the cheapness of the airfare has any impact on the liability regime.

The writers examined what is runway incursion incident and how same can be addressed with a view of a mixed method Approach to run way in cursion rate[45] to see how the incidents can be reduced to the lowest level. According to the writers the runway incursions have occupied the public psyche since the incident of the catastrophic collision of two Boeing 747 aircraft on the runway at Tenerife, Spain in 1977 which killed 583 and remains the most deadly civil air disaster in history. They further defined the incidents as any occurrence at an aerodrome involving the incorrect presence of an aircraft, vehicle or person on the protected area of surface designated for the landing and takeoff of aircraft.

The writers duely analysed the concept o the runway incursion and its impart on the safety of the air transportation system in Indian. However, the writers in their wisdom did not address the issue of liabilities and compensation of victims of a runway incursion hence the area of concern to this research work.

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45. Robert Edward Joslin, Benjamin Jeffry Goodheart, and Willaim Anthony Tuccio. A mixed method approach to runway incursion rating: International Journal of applied aviation studies.(2012),p3.

The writer of managing the Growth of foreign Airlines in Nigeria[46] examined the operation of airline services in Nigeria and observed that the Ethopian Airlines represent one of the African largest air carrier flying into Nigeria with entry points at Lagos, Abuja and lately Enugu. He concluded with a suggestion that all the foreign airlines entering and operating, in Nigeria should be made to have a single entry point as a measure to force them to enter into partnership with the local Airlines operators to redistribute their passengers to their various local destinations.

However, the writer did not remember to address the legal effect of such distribution on the contractual relationship between the foreign carrier and the passenger on one hand and between the local airline operators and the passengers on the other hand i.e which of the carrier shall be liable to the passengers and at what point.

The writer of compensation for victims of Aircraft accident under the Nigerian Laws: A call for a paradigm shift,[47] appraised business of air carriage with particular emphasis to the accident perspective and observed that the level of compensation of victims of aircraft accidents in Nigeria is poor and nothing to write home about, in comparism with the standard set by the ICAO of which Nigeria is a party. The writer concluded and recommended that all categories of victims of aircraft accident should be compensated alongside with the passenger victims and called for an amendment of the relevant provisions of the Civil Aviation Act 2006.

The writer, though was right in calling for an amendment of the relevant provisions of the 2006 Act, he did not call for the amendment of the relevant provisions of the Montreal Convention 1999 which is the bedrock legislation through which the Civil Aviation Act 2006 emanated, hence the relevance of this review.

The writer of Corporate Aviation Liability - No hiding place,[48] examined and analysed the extent of the corporate liability of the various corporate entities to the victims of aircraft accident. It was pointed out and established that corporate liability in the air transport operation is inevitable. This work though agreed with the writer over this assertion, but however worried about the culpability of the individual staff of the corporate entity who are directly responsible for the civil wrong that brought about the

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46 Koleosho E. Aviation and Allied Business Magazine, May – June 2014.

47. Aliyu Mustapha, Bayero University Journal of Public Law Vol. 3, No. 1. June 2011

liability. This aspect was not examined by the writer.

The joint writers of Legal framework for the international Air Services agreements: Aircraft analysis, examined the various[49] conventions on the air transportations vis-à-vis the two and five freedom Agreements, the Bermuda type and open skies Agreements and them concluded that each state is at liberty to negotiate multilateral air service agreements.

The writer though acknowledged the discretion of every state to enter in to a multilateral air service agreements, they did not expanciate on the extent of such agreements and whether such agreements could be reached in contrast to the provisions

of the Montreal convention and the 2006 Civil Aviation Act. This lacuna in the literature, calls for a further research hence this review.

1.9 Organization Layout or Chapter Outline

This research is divided into five Chapters. Chapter one is titled General Introduction. It discusses the Background of the Research, Statement of the Research Problem, Research Questions, Aim and Objectives, Justification of the Research, Scope of the Research, the Research Methodology, the Literature Review and the Organizational Layout. Chapter two Examined the Nature of Aviation Law in General, chapter three titled the Analysis of the Legal Regimes for Liability in the Aircraft Accident in Nigerian. This chapter discusses, the International, Regional and Sub-regional Legal Frameworks, the Nigerian Legal Regimes, Limits of the Carriers Liability and the Issues and Challenges on the liability of the Carriers.

Chapter four tiled the Legal Regimes for Compensation of Victims of Aircraft Accidents. This Chapter examined the meaning of Compensation, who is entitle to Compensation, Passenger Victims, Ground victims, Crew Members, Assessment of the Quantum of Compensation in Relation to dead Victims, Victims with Fatal and Non-fatal Injuries, Lost of Property, Lost of Business and psychological Trauma. The Chapter five titled Summary and Conclusion. The Chapter analysed the Findings of the Research, the conclusion and the Recommendation thereof.

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49. Agada J.A.O, Amaba A. R & Peter Yeh Journal of Contemporary Legal Issues, 2011.

It is clear from the aforementioned literatures that both practical and legislative gaps were left in the various literatures ranging. From the extent of the discretion of each sovereign State to enter into multilateral air service agreements, right of each signatory state to the Montreal Convention to depart from the provisions of the convention through local legislation, etc.

Accordingly, this research work examines the lapses in the reviewed literatures to constitute the existing problems with a view to proffer recommendations thereof at the end of the research work.

CHAPTER TWO

CONCEPTUAL DISCOURSE OF KEY TERMS

2.1 Nature of Aviation

The words “Air Law”, “Aeronautical Law”, “Air Transport Law” and or “Civil Aviation Law“ refer to the same thing in the legal parlance. Thus, “Air Law” can be

described as a body of rules governing the use of airspace and its benefits for aviation, the general public and the nation of the world.[1]

The International Civil Aviation is governed by International Conventions hence was defined by the International Civil Aviation Organization (ICAO)[2] as "a body of principles and rules of public, private, national or international Law which govern the legal relation arising from the civilian use of Air transport activities". According to Shaw Cross and Beaumont[3], Air Law can be defined as a combination of public and private international Law, whose purpose is to provide a system of international regulation of international civil aviation and to eliminate conflicts or inconsistencies in municipal Air Laws.

The study of law relating to air transport is important as there is need to ascertain the standard, terms and conditions under which mails, passengers and cargo are transported. The law therefore intervenes to set the standards and rules and enforceability to be accepted internationally hence the standard and recommended practices. The law equally sets parameters for air carrier operators, their liability for damages arising from their operations and compliance with laws rules and regulations.

According to M. N. Shaw on International Law[4], there were a variety of theories prior to the First World War with regard to status of airspace above states and territorial waters. One view was that, airspace was entirely free. Another view was that there was, upon an analogy with the territorial sea, a band of "territorial air" appurtaining to the state followed by a higher free zone. A third approach was that all the airspace above a state was entirely within its sovereignty, while a forth view modified the third approach

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1. D. A Glass & C Cashmore, Introduction to the Law of Carriage of Goods (1989), Sweet Maxwell, London, P 205.

2. An international and specialized agency of the United Nations under the Article 7 of the UN charter and with judicial personality having as its main objective to develop the principles and techniques of international air navigation and to foster planning and development of international air transport.

3. Air law, (2000) (4th Ed) vol. 1. London Butter worth at p1

by positing a right of innocent passage through the air space for Foreign Civil Aircraft.[5] There was a particular conflict between the French theory of freedom of the air and the British theory of state sovereignty, though both agreed that the airspace above the high seas and terrae nullius was free and open to all.

The outbreak of the First World War with its recognition of the security implications of use of the air changed the earlier system. The prevailing approach therefore was based on the extension of state sovereignty upwards into airspace. This was acceptable both from the defence point of view and in the light of evolving state practice regulating flights over national territory. This was reflected in the 1919 Paris Convention for the Regulation of Aerial Navigation which recognized the full Sovereignty of States over air space above their land and territorial sea.[6] Accordingly, the international law rules protecting sovereignty of state apply to the airspace as they do to the land there under. This principle was pronounced upon by the International Court in the case of Nicaragua.[7] However, sovereignty was understood to extend to an unlimited distance into the airspace, although this has been modified by the new law of outerspace[8] to the effect that each State has exclusive sovereignty over its air space.

The present regime concerning Air Navigation developed from the Chicago Conference 1944 and the Conventions were adopted therein. The Chicago Convention on International Civil Aviation, which does not apply to state Aircraft (for example military, customs, and police aircrafts)[9] emphasized the complete and exclusive sovereignty of states over their air space[10], Article six thereof reinforces this by providing that no scheduled International air service may be operated over or into the territory of a contracting state without special authorization of that state.

However, the states parties to the Convention qualified their sovereignty by agreeing in Article five that aircraft of other contracting states:-

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5. Oppenheim's International Law, pp 650 - 1

6. Innocent passage to the private aircraft of other parties so long as they complied with the rules made by or under the authority of the convention. Similarly, Articles 5-10 provided that nationality of aircraft would be based upon registration and that registration would take place in the state of which their owners were nationals.

7. ICJ Report, 1986, pp 14, 128: 76 ILR. p1.

> *"Not engaged in scheduled international air service, shall have the right to make flights into or entrances non-stop across (their territory) and to make stop for non- traffic purposes without the necessity of obtaining prior permission and subject to the right of the state flown over to require landing"*[11]

This provision has in practice been viewed as an exception to the general principle enumerated in Article six of the Convention, particularly since states have required that permissions be obtained prior to the acceptance of charter flights over or into their territory, even though such flights do not really come within the meaning of Article six or within the definition of scheduled international air services put forward by the Council of the International Civil Aviation Organization in 1952.[12]

To this end, the Chicago International Air Service Agreement, 1944, dealing with scheduled international air services, specified that contracting states recognized the privilege of such service to fly across their territories without landing and to land for non-traffic purposes. These two freedoms agreement has been termed and regarded as accompanied by a five freedoms agreement upon which the 1944 Chicago International Air Transport Agreement added to the aforementioned provisions

extensive privileges of taking on and putting down passenger's mails and cargo in the territories of contracting states.

This Agreement however was not ratified by many states, and the U.S.A withdrew from the Agreement in 1946 claiming that too much of commercial values had been granted away by the agreement. This consequently earned the agreement little importance today in the aviation circle.

The implication of this is that, in actual practice, the regulation of international scheduled services has been achieved by an extensive network of bilateral agreements such as the U.K-U.S.A Bermuda Agreement of 1946[13.] It is pertinent to note further that the Chicago Conference 1944 also led to the creation of International Civil Aviation Organization (ICAO), a United Nation specialized Agency based in Canada, which

11. Note also that under Article 9, states may for reasons of military necessity or public safety prohibit or restrict air craft of other states on a non- discrimination basis from flying over certain areas of their territory.

12. The distinction between scheduled and non- scheduled international services is not entirely clear. By Article 68, each contracting state to the convention may designate the route to be followed within its territory by any international air service and the airports which any such service may use. See international law association; Report of the 63rd conference at war saw, London, 1988 pp 835.

concentrates upon technical or administrative co-operation between states and adoption of agreed safety standards to the encouragement of the expansion of navigation facilities.[14] ICAO's aims and objectives are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport. It has a range of powers from legal to technical and administrative powers and it consists of an assembly, a council and such other bodies as may be necessary.

The Chicago Conference in the main therefore reaffirmed the principles agreed upon in 1919 Convention with regards to the sovereignty of states over its airspace and the need for permission to operate schedule international air services among

other issues. Air cabotage, i.e. the right to carry traffic between points within territory of a state can be reserved exclusively to the state, as traffic between metropolitan and colonial area. It must be noted that the Chicago Conference system was to some extent undermined by the growth of bilateral Agreements as the means of regulating International air transport, although many common principles may be discerned in such Agreements as they are modeled upon the Bermuda model.

The Bermuda principles in general made provisions, that the air transport facilities available to traveling public should bear a close relationship to the requirements of the public to the extent that there shall be a fair and equal opportunities for the carriers of the two nations to operate on any route between their respective territories. The operations by air carriers of either government of the trunk services described in the Annex of the Agreement and the interest of the carriers of other government shall be taken in to consideration, so as not to unduly affect the services which the latter provides on all or part of the same routes. It should be the understanding of both governments that services provided by a designated air carrier under the Agreement and its Annex shall retain, as their primary objective, the provision of capacity adequate to the traffic demands between the country of which the carrier is a natural and the country of ultimate destination of the traffic. The right to embark or to disembark on such services of international traffic destined for and coming from third countries at a point or points on the routes specified in the annex to the agreement shall be applied in accordance with the general principles of orderly development to which both governments subscribed and shall be subject to the general principle that capacity should be related;

14. See http://www.icao.org1, accessed on the 7th May 2015.

a. To traffic requirements between the country of origin and the countries of destination;

b. To the requirements of thorough airline operations; and.

c. To traffic requirement of the area through which the airline passes after taking account of local and regional service.

It should be the intention of both governments that there should be regular and frequent consultations between their respective aeronautical authorities and that there should thereby be close collaboration in the observation of the principles and the implementation of the provisions outlined therein and in the Agreement and its Annex[15] One major feature of Civil Aviation is its international nature. The aircraft which represents the bedrock of civil aviation activities moves for a very high speed and in three dimensions that enables an aircraft enroute to a particular destination to pass through the air space of several other countries, each having its own distinct national laws and customs,[16] so also is the specter of law relating to civil aviation. It is therefore an aspect of law that cannot be considered in isolation from the development in other jurisdictions.

From historical perspectives, it has been on record that the hot air balloon constructed by the Montogolfier brothers (Joseph and Etienne) represented the first aircraft to be used for aerial transport, including carriage of mails and for military purposes such as reconnaissance and bombing in the year 1783,[17] when a police directive was issued aimed directly and exclusively at the balloons of the Montogolfier brothers. At that time flights were not to take place without prior authorization.

For instance, in America, the first authenticated flight by man in a power driven heavier than – air machine was achieved on 17th December 1903 by the Wright Brothers at Kitty Hawk, North Carolina. According to Shaw Cross and Beaumont on air law, Professor Lang by had already designed a practical aircraft capable of flight under its

15. M. N. Shaw, International Law, (2005), Cambridae University Press, USA, 4th edition, pp 467 - 468

16. Diederiks- verschoor, i.H (1993) introduction to Air law (5thed.) p4

17. See Shaw cross and Beaumont (issue 82, Dec 2000) Air Law. (4th Ed) Vol. 1. London,

own power which was regarded as the embryonic prototype of all modern aeroplanes. In the year 1909, Lawyers came in to aviation industry by establishing and founding International Committee on Aviation Law which formed the basis for the coming into being of a Conference on Aerial Navigation in 1910 by representatives of Nineteen Nations in Paris. At the end of the Conference, they drew up but could not agree upon a Code of International Air Law. Consequently, the British Parliament in 1911 enacted the Aerial Navigation Act of 1911 which was re-enacted (with amendment) in 1920 and repealed by the ultimate Civil Aviation Act of 1949, a statute applicable in Nigeria being a British colony.

In the Nigeria context, the first flight in the Country was recorded in 1925,[18] although commercial aviation did not commence until 1935 when the Imperial Airlines started regular flights between Nigeria and the United Kingdom. Immediately after the Second World War, the British overseas Corporation (BOC) replaced the Imperial Airlines to provide air transport service to the British West African Colonies. The service was taken over by the West African Airways Corporation (WAAC) in 1946.

This Corporation broke up when Ghana gained independence in 1957 and resolved to form its own independent airline. Consequently, the West African Airline corporation was later renamed Nigeria Airways limited after the Federal Government of Nigeria bought over the shares of other share holders in the Company. The aviation industry in Nigeria prior to independence had continued to be governed by laws promulgated by the British Parlianment[19] until 1964 when the Civil Aviation Act 1964 was enacted and since then the industry had continued to be administered principally by Nigerian legal institutions and legal instruments.

2.2 Air Craft Accident

All methods of transport are inherently dangerous in the sense that transport involves moving of vehicles[20]. A mistake by the pilot or driver of a vehicle or a mechanical failure of one of many components of an aircraft can have a catastrophic consequence. Thus, overlooking some vital steps in procedure by a person far removed from the actual vehicle can result in an accident hence innocent bystanders are equally at risk from an accident as the crew, the driver and the passengers.

18. When a Royal Airforce Officer Stationed in Sudan decided to undertake a long cross country flight from Khrtocum to the Northern parts of Nigeria and landed on the race cource in Kadu. (See Adegboyega S. (2000) Aviation Law and Business in Nigeria – presented and future" quoted in the Annual Aviation Law and Business Digest. Vol. 1 Page 11.

19. The Nigeria Independence Act 1960 abolished the colonial Law validity Act 1865 and provided that no Act of UK

There is no method of transport that is immuned from incidents leading to death or injuries to passengers, crew or bystanders. The toll of human suffering is immense for the few people involved as it is expected that in a well run industry, accidents should never happen, but in transport accidents occurs with certain regularities.

To some jurists, no accident should happen at all but occasional ones are inevitable as part of the price of moving around. According to Cooper J.C[21] the goal should always be absolute safety, but absolute safety is not obtainable in any form of transportation as all the sad factors are going to come together and result in an accident.

One may therefore asserts that all aviation institutions, including the regulatory agencies, the wide array of voluminous manuals, technical documents, laws, rules among others exist with the principal aim of ensuring safety of air transportation. In spite of all these elaborate planning and processes to ensure safety, accidents still occur. Accident therefore according to the Concise Oxford Dictionary[22], is an unfortunate incident that happen unexpectedly and unintentionally, something which happen by chance. It can also be described as unintended and unforeseen injuries,

occurrences, something that does not occur in the usual course of events or that could not be reasonably anticipated.[23]

From the perspective of aviation however, accident has been variously defined literally and technically. The Civil Aviation (Investigation of Accidents) Regulations[24] defined "accident" to include "any fortuitous or unexpected event by which the safety of an aircraft or any person is threatened".

According to O. Oduselu Mnse,[25] "accident" means "an occurrence associated with the operation of an aircraft which takes place between the time any person boards

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21. Cooper J.C, Roman Law and the Maxim Cujus Est solum in International Law, Institute of International Air Law, Mc Gill University at www.lawjournal mcgil.CA, accessed on the 9/8/2015.

22. 10th Edition at p 7.

23. See Blacklaw Dictionary, 7th Edition at page 15.

24. The Regulation made pursuant to section 2 of the old Civil Aviation Act (CAP. 51 Laws of Federation 1990.

the aircraft with the intention of flight until such time such person have disembarked, in which:

> *"a. A person is fatally or seriously injured as a result of; being in the aircraft or in direct contact with any part of the aircraft or in direct explosion of Jet blast.*
>
> *b. The aircraft sustained damage or structural failure which' adversely affect the structural strength and would normally require major repair or replacement of the affected component.*
>
> *c. The aircraft is missing or completely inaccessible".*

In the same vein, Regulation 2(1)[26] described an Aviation Accident as an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked in which:-

a. A person suffers a fatal or serious injury as a result of, being, in or upon the aircraft, direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or direct exposure to jet blast, except when the injures are from natural causes, self inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to passengers and crew, or

b The aircraft sustained damage or structural failure which: adversely affects the structural strength performance or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to the engine, its cowlings or accessories, or for damage limited to propellers, wings, antennas, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin, or

c. The aircraft is missing or completely inaccessible.

It is pertinent to distinguish between an aircraft accident and an incident. Thus, an incident literally means falling upon something; liable to occur; naturally belonging (to): consequent – that which happen: an event: a subordinate action: an episode: that which naturally belongs to or is consequent upon something else: a minor event showing hostility and threatening more serious trouble: a brief violent action.[27] From the statutory point of view, Nigerian legislation on Aviation, (unlike the UK

26. Civil Aviation (Investigation of Air Accidents and Incidents) Regulations; United Kingdom, Statutory Instrument No. 2798 (1996).

Regulations and Annex 13 to the popular Convention on International Civil Aviation, Ninth Edition, 2001) did not take cognizance of what is an incident and contained no definition of an incident. Accordingly, both the UK Regulation of 1996 and the Annex 13 (supra) defined an accident as an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation, an air craft.

A serious incident therefore has been described as an incident involving circumstances indicating that an accident nearly occured[28]. Consequently, the major distinction between an accident and a serious incident only lie in the result. To this end, it is the researcher's view that, it is not every aircraft incident that can be described as accident thus, every air craft accident involves incident but not every air craft incident involves accident. This view though legalistic, yet it is logical and academic. Even the press and the public elites could not differentiate between an air craft incident and an accident as they describe every air crash as an accident.

There is the need therefore to broaden the definitions, and the meaning of aircraft accident in Nigeria by distinguishing between same and an aircraft incident. According to the Attachment C to Annex 13 and the ICAO Accident/incident Reporting Manual (Doc. 9156) the following incidents may be considered serious incidents and not accidents:

1. New Collisions requiring avoidance manouvire to avoid a collision or an unsafe situation or when an avoidance action would have been appropriate,
2. Controlled flight into terrain only marginally avoided,
3. Aborted take-offs on a closed or engaged runway,
4. Take-offs from a closed or engaged runway with marginal separation from obstacles.
5. Landing or attempted landings on a closed or engaged runway,
6. Gross failures to achieve predicted performance during take – off or initial climb,
7 Fire and smoke in the passenger compartment, in cargo compartment or engine fires, even though such fires were extinguished by the use of extinguishers agent.
8. Events requiring the emergency use of oxygen by the flight crew.

28. See Attachment C to Annex 13 and the ICAO Accident /Incident Reporting manual (Doc. 9156).

9. Aircraft structural failures or engine disintegrations not classified as an accident

10. Multiple malfunctioning of one of more aircraft systems seriously affecting the operation of the aircraft.

11. Flight crew incapacitation in flight.

12. Fuel quantity requiring the declaration of an emergency by the pilot.

13. Take-off, or landing incidents such as undershooting, overrunning or running off the side of runaways.

14. System failures, weather phenomena, operations outside the approved flight envelope or other occurrences which could have caused difficulties controlling the aircraft.

15. Failure of more than one system in a redundancy system mandatory for flight guidance and Navigation.

16. Running in to unexpected obstacles on the runway during landings or take-off (for example, cattle grazing on the runaway or unexpected pot-holes).

According to the learned Author of Managing Transport operation,[29] the subject of safety in transport is usually treated in terms of the renowned three major points namely; enforcement, education and engineering. According to him, enforcement involves the setting of standards, both technical and behavioural, and backing the standards with a system of penalties if they are breached, and providing some forms of enforcement agency to apply sanctions to those who break or defy those standards.

Education and training are vital and well recognized in the matter of transport safety. Thus, education has wider implications than simply teaching to attain competence. It must involve alerting everybody involved in transport operations to the risks inherent in poor procedures and in deviating from the safe forms of operation. No

matter the high levels of engineering safety inherent in any transportation tools or system, the roles and impacts of human being that maintain and operate it is of imminence. Consequently, human lapses can only be minimized or eradicated by proper education and training which do not end only in teaching how to perform the transportation tasks but enlighten the operators of the risks involved in any action they

29. E. J. Gubbins, (1988) Managing Transport Operations, Kogon, p136

undertake in the processes. Engineering being the third factor is one of the major concepts in the design and construction of all transportation tools including aircrafts. Engineering therefore hold the key to transport systems because much safety regulations are the result of engineering analysis. Consequently, there are certain numbers of factors which are usually present in all accidents; for example chance which is the random happening which could not be foreseen by even the most safety conscious individual. In the legal parlance, this is often referred to as an "act of God". The craft of an aeroplane after hitting a flock of birds and the sinking of a ship by a freak wave which could not be predicted are pertinent instances. Although these types of accidents are becoming less frequent because of the scientific knowledge about the dynamics of ocean system. The generation of weather patterns and the way in which chance happenings arise. Thus, presently, less air crash can be attributed to an act of God.

Furthermore, the largest cause of accidents in transport can be classified as human error[30]. The Ship Captain takes the blame for the ship running aground because he did not have the correct charts or had to stay on the bridge in fog for too long because he was not confident in his junior officer's ability to look after the ship. The airline pilot overruns the runway during landing at an unfamiliar airport. Inherent faults in the engineering of the vehicle and the infra – structure can cause an accident. Engines can fall-off aero planes because the maintenance was not properly carried out.

2.3 Accident Investigation

The Chicago Convention, applicable to over 150 member states of International Civil Aviation Organization, imposes an obligation on the state where an accident occurs to institute an enquiry in defined circumstances, and as far as its law permits to conduct the inquiry in accordance with ICAO procedures.

Similarly, observers from the state of registration of the aircraft are entitled to be present at the enquiry if that state is not the state in which the accident occurs.[31] Consequently both the Articles 26 and 37and the Annexure 13 were designed to provide

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30. Many researchers contended that all accidents are the result of human errors. especially if the error can be attributed to the operator of the Vehicle and the nature of the cause and effect can be traced for enough back along the path of actions leading to the accident, it is therefore easier to blame human error as cause of an accident.

31 See Article 26 of the Chicago Convention. See also Article 37 which specified that standard and recommended

a common International frame work for the investigation of accident in Civil Aviation for it was foreseen that an aircraft involving in an accident may be registered in a Country, constructed in another Country, operated by an airline company in another Country, flying between two other Countries and had an accident in another distinct Country.

According to Annexure 13 of the Convention, the objective of an Accident inquiry shall be the prevention of future Accidents and not to allocate blames.[32] Some states ensure impartial investigations and inquiries, by forming independent Accident Investigation bodies. In USA, it is the Law that National Transportation Safety Board's accident reports, can be used in damage suits arising out of the Accident and that its reports are frequently highly critical of the Federal Aviation Administration. In the United Kingdom, the Air Accident Investigation, a Branch of the Department of Trade is independent, in that, it reports directly to the Minister of the Department and criticizes the Civil Aviation Authority and recommends changes in its regulations and

procedures. High standards are not achieved in all Countries particularly the so called third World countries as a result there have been cases where a state considers an accident report published by another state to be so deficient that it has to publish its own report or make a formal comment on the original report. However, in 1979, the ICAO's Annex 13, was amended so as to permit an accredited representative of another state to append a dissenting minority attachment to the official accident Report, and the United Kingdom in 1980 used that right to append an attachment to the Panish report of an accident to a British registered Boeing 727 that crashed at Teneriffe in April 1980.[33]

To this end, Annex 13 described the investigation as a process conducted for the purpose of accident prevention which includes gathering and analysis of information, the drawing of conclusions, including the determination of causes and when appropriate the making of safety recommendations. It has equally been described as an inquiry into the circumstances leading to an accident to determine its causes and effects with the aim

32. Some states conduct their inquiries with that objective in mind widely differing national laws and level of technical expertise and national interest. What perceived to be national interest and public interest in aircraft Accident reports tend to interfere with pursuit of the ideals expressed in the Chicago Convention and the Annex 13 thereof. This is because, in many countries the airline and major Airports are owned and operated by the state, and the Air Traffic Control Agencies are similarly national Agencies hence the conflict of interest according to Laure Taylor, Air Travel. How safe at page 83.

of preventing future occurrences. In the same vein, states with major involvement in the civil air transport industry such as the United Kingdom, has teams of trained investigators on standby at all times, and their investigation kits, including technical measuring equipment, cameras, protective clothing and other clothing suitably for wear in any climate are always ready for use. Accordingly, the United Kingdom definition of a reportable Accident includes death or serious injury to a crew member or passengers, structural damage to an aircraft and any failure requiring major repair or affecting aircraft performance.

Furthermore, in the United Kingdom, a decision as to whether an investigation is to result in a public inquiry is made by the Secretary of state, and the determinant is usually the degree of public concerned and national interest. Increasing technical complexity of aircraft operations and accident investigation is ending to favour the non – public forum, but in every case the findings are promptly sent to all interested technical parties so that any preliminary precautionary actions needed may be quickly taken. Thus, any person whose reputation is likely to be called into system is provided with a copy of the original draft report and is allowed to make representations or to seek change before publication.[34]

However, in the USA, the procedures are different, because the freedom of Information Act leads to expectations of an early public hearing where a number of persons and Organizations are party to the proceedings. This is where the ground to later litigation are set usually to the detriment of the truth findings because both the investigators and the witnesses are put under great pressures to provide answer to every question.

The objectives of on-site investigations are similar everywhere, they are to avoid early interpretation, taking the form of a theory that could prejudice the importance of any information that becomes available at a later stage and to seek corroboration for all items of evidence. Ideally, all pieces of air wreckage are recovered after their position in

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34. This procedure is used, and on one occasion, after a fatal Accident to a four engine jet-powered airline, the Pilot accompanied by a technical advisor persuaded the authorities to amend the report after showing that it failed to take account of the heavy work load experienced during the very short flight. Though the main conclusions of the report were not affected, but mention was made of the mitigating circumstances which ensured that the

the pattern of wreckage has been plotted, and all witnesses and survivors and particularly the flight crew are questioned. Post mortems are conducted and victims identified against their known sitting positions.

Recovery of the flight recorders take a high priority and the investigators take every step possible to prevent them from being impounded by coroners, police and investigating magistrate,[35] as delay in obtaining flight recorder information could prevent the desired objectives.

Failure of structures, materials, engines, flight control systems, air craft systems, human failures and combinations of all these failures are critically looked into. Air traffic control Radal plots, tape recordings of radio transmissions and reports of the weather prevailing at the time of the accident are examined if available.

Investigators are akin to detectives, particularly when sabotage or a failed attempt at a hijacking is suspected and the help of forensic and explosive experts is required.[36] On completion of on-site investigation, wreckage may be moved to a place where better technical facilities are set out in the correct position relative to each other with further exhaustive tests taking place until a complete understanding and appraisal of the evidence is available. This process cost a great deal of funds but considered to be highly essential if air safety is to be maintained or achieved.[37]

2.4 Victims of Aircraft Accidents

There cannot be an aircraft accident without Victims, and there cannot be an aircraft investigation without victims. A victim of aircraft accident therefore can be described as a person who is fatally or seriously injured as a result of been in the aircraft, or in direct contact with any part of the aircraft or in direct exposure to Jet blast.[38]

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35. An early form of flight Recorder performed only an "eye witness" function, recording five to six parameters by making scratches on a metal foil medium. The parameters were recorded in analogue form and were usually altitude, air speed, magnetic heading, time and G-forces. The recorded informations are useful where no reliable human observers witnessed an accident, or to supplement reports made by humans.

36. Laure T. Air Travel, How safe is it? (1988) Blackwell. P 185-186.

37. For instance, recovery of Wreckage of a British operated Boeing 707 from Zambia involved chatering two flights by large Cargo aircraft.

Apart from the aircraft, passengers who doubled as victims of aircraft accidents are the subject matter of an aircraft accidents. A victim therefore is a person, who boarded an aircraft and Accordingly, victims of an aircraft accident are passengers who suffered a fatal or serious injury as a result of being in or upon the aircraft, or having direct contact with any part of the aircraft, including parts which have become detached from the aircraft or having direct exposure to Jet blast.[39]

A critical examination of the above definition gives a wider scope of who victims of aircraft accident are beyond being a passenger in the aircraft. It can therefore be said that a non passenger in an aircraft who suffers injury as a result of exposure to Jet blast can be described as a victim of the aircraft accident. Similarly, a person who suffers injury, loss or damage on land or water by an article or a person in or falling from an aircraft while in flight, taking off or landing, then, without prejudice to the law relating to contributory negligence, damages in respect of the injury, loss or damage shall be recoverable without proof of negligence or intention or any other cause of action, as if the injury, loss or damage had been caused by the willful act, neglect or default of the owner of the aircraft.[40]

2.5 Nature of Compensations

Compensation means a sum of money awarded to a person injured by the tort or breach of contract of another[41]. Once a party to a contract establishes to the satisfaction of the Court that the other party has committed a breach of contract or that the other party has done or omitted to do an act which caused him injuries, the most common claim is that for compensation in form of damages[42]. This principle of

common law was said to be laid down in the case of Robinson Vs. Harman[43]. Where it was observed that "the rule of the common law is, that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the situation, with respect to damages, as if the contract had been performed".

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39. See Regulation 2 (1) Civil Aviation (Investigation of air and incidents, United Kingdom, Statutory Instrument No. 2798 (1996).

40. See Shell Petroleum Dev. Co. Nig. Ltd. Vs. Teibo & Ors (1996) 4 NWLR (pt 445) 657.

41. I.E. Sagal Nig. Law of Contract (1991) Spectrum Law Publishing, Kaduna Nigeria, p530.

42 (1848) 1 Ex. 530 at page 585

On the measurement of damages, the general rule is that damages are assessed from the time when the cause of action leading to the claim arose i.e. the date and time of the breach[44]. To this end, since it is apparent that the aim of awarding damages is to place the injured party, so far as money can do it, in the same situation as if the contract had been formed, victims of aircraft accidents are to be compensated or damages in the likes manner. Their quantum of compensation should be assessed in such a manner that such victims are put in a position as if the accident that lead and resulted in to the injuries, loss or death did not occur or the position they would have been had the air carriage been successfully carried out without the accident.

Since victims of aircraft accidents differ in form and status, it is not certain whether it is necessary to consider their status in determining what is payable to them severally in form of compensation, or to place all of them on the same pedestrian of the fact that they are all human being. For example, whether the late Sultan of Sokoto who lost his life in an aircraft accident and a student of Usman Danfodio University Sokoto whose life was also lost in the same disaster can be offered the same amount of compensation.[45]

To this end, where the losses claimed by aircraft accident victims are for specified items with clear or known monetary values, same can be under a claim for "special damages. For example, the Plaintiff who only sustained injuries in an aircraft bringing a claim against the carrier claiming loss of earnings, cost of treatment, value of lost goods, psychological trauma e.t.c[46]. Where however, the court in itself has to estimate or asses the damages on its own, the resultant figure is known as general damages[47].

It is important to further state that the above classification of damages in to special and general damages is not usually applicable in contract as the Supreme Court has discouraged same and urge litigants to ask for damages simplicita. Thus, the court in the case of Chanrai Vs. Khawam[48]. Where it was held as follows:-

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44. See Article 17 & 18 Montreal Convention and Sections 48 (1) & (3) Civil Aviation Act 2006.

45. Ibid note 2 at page 56

46. As was done in Ghandi VS. Pfizer (1965) 1 All NWR, 182 at 184

> *We would point out that the terms special and general damages are misleading and are likely to create confusion in the assessment of damages, especially when these terms are employed in connection with cases in which such distinction is neither necessary or desirable.*

On the assessment of damages, it has been severally held that the amount of compensation can be assessed with a degree of accuracy which will go towards putting the injured person in the same position as he would have been had, he not sustained the wrong, hence reasonable and fair compenstaion[49].

Sufferings, pains and nervous shock which the plaintiff suffered in the past and is likely to undrgo in the future are considered in assessing the quantum of damages payable to a plaintiff. Nigerian Court usually award substantial damages for loss of

amentity or loss of faculty[50]. Although, no amount of damages is commensurate or perfect compensation for a grave injury, payable and awardable, compensation largely depends upon the nature of the injury and the circumstances of a particular plaintiff[51].

Considering the combined effect of sections 48 (3) section 49 (2) and section 71 (1) of Civil Aviation Act 2006 which established a form of liability scheme in favor of passengers and other consumers against the carriers or the Civil Aviation Authority as to when the cause of actions legally arose reasonable enough to ground the Authority, the carrier or any other stakeholders liable, one can easily infer that a cause of action in an aircraft accident is nothing but series acts (whether contractual or otherwise) or relationship between a passenger and an operator or carrier such as payment and obtaining Air ticket, boarding the flight and taking off thereof or landing etc.

Thus, Article 17[52] made the carrier liable for damage sustained in event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the Aircraft, or in the course of any of the operations of embarking or disembarking. This provision according to a learned author[53] raises some essential requirements needed to established and ground liability in an aircraft accident; namely:-

49. Supra at page 140.

50. See Heaps Vs Perrite Ltd. (1937) 2 All ER 60, Oliver Vs. Ashman (1962) 2 QB 210 Quoted at page 40, paragraph G.b. of the case of Iyere Vs. Bendel Feeds Floor Mills Ltd. Note 48 above.

51. Calistus E. Uwakwe, introduction to Civil Aviation Law in Nigeria, 2006, Aviation publishing and consultancy company Ltd, p148.

52. Montreal Convention

a. The passengers must have been wounded or suffered any bodily injury[54]

b. The Accident must have arisen from an accident.

c. The accident must have occurred on board the aircraft or during the course of embarking or disembarking.

54. See Section 24 (1) & (2) Civil Aviation Act 2006.

CHAPTER THREE

LEGAL REGIMES FOR LIABILITY IN AIRCRAFT ACCIDENTS IN NIGERIA

3.1 Introduction

Overtime, a system of compensation for loss or damages in our transportation has evolved and developed which culminated in the adoption of internationally accepted principles of liability regimes codified in the international conventions[1]. Principal among such conventions is the convention for the unification of certain Rules Relating to international Transportation by Air (Warsaw Convention) 1929[2] whose main aim and purpose was to establish a uniformity in the traveling documentations and limit the potential liability of the carriers to 125,000 francs[3]. This was followed by the Hague protocol 1955 which amended the 1929 convention to the extent of increasing the liability limit under Article 22 of the 1929 convention to 250,000 Gold francs and inserted the definition of willful misconduct. This protocol, though ratified by the Nigerian government on the 1st July, 1969, it was never domesticated in Nigeria.

The Montreal Agreement of 16th May 1966 came in to being as a form of domestic/private Agreement between the United State Civil Aeronautic Board (CAB) and the affected carriers within its jurisdiction for the purpose of increasing the limit of liability of the carriers to 58,000 US Dollars exclusive of cost and 75,000 inclusive of cost.

The International Air Transport Association in October 1995 and June 1996 adopted an agreement which made the carriers to wave all limit of liability in respect of recoverable compensatory damages in respect of injuries and death, but preserve the Article 20 (1) which create defence of necessary measures for portion of claim which exceeds 100,000 SDRS.[4]

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1. Calistus E.U, *Introduction to aviation law in Nigeria* (2006), Aviation Publishing & Consultancy Ltd, Lagos, P141.

2. Which Under Article 22 (4) Imposes liability on air carriers in respect to accident occurring on board aircraft or while the passenger was in the course of operation or of embarking or disembarking.

3. See Article 22 (2) Warsaw convention.

3.2 Convention for the unification of certain Rules, relating to international carriage by air (Montreal convention) 1999

This Convention in effect has been incorporated into Nigerian Aviation Law by Local legislation in 2006.[5] The Convention was created and signed by representatives of 52 Countries at an International Conference convened by the International Civil Aviation Organization (ICAO) in Montreal on May 28th 1999. Out of this number, representatives of 30 countries have formally ratified the Convention and incorporated same into their respective Local Aviation Legislations.[6] The Convention prevails and

takes precedent over all other rules and legislations on carriage by air as the Convention today represent current air carrier liability regimes around the world. In effect, the Convention made significant changes to the scope and extent of the carrier's liability, expands the jurisdiction where the carrier can be sued, and recognizes the effect of code sharing on air carrier liability.[7]

The Director General of the Civil Aviation middle East region,[8] appraised the International civil Aviation Organization's work for economic development of Air transport on its priority work under the strategic objective economic development of air transport, focusing on air transport policy and regulation (the progress of the follow-up work to the world air Transport conference), infrastructure management (incentive and financing scheme for the implementation of the Aviation System Block upgrades) and aviation data (traffic forecasts, new ICAO Data plus and business tools) which highlighted the establishment of the voluntary Air transport fund which supports ICAO's activities not converted by the regular programme budget under the Strategic Objectives Economic Development of Air Transport.

The 38th session of the ICAO Assembly endorsed an action plan for the implementation of the recommendations adopted by the Sixth wordwide air transport conference (AT Conf/6 March 2013). The follow up work which has been conducted with the help from the Air Transport Regulation Panel (ATRP). The Thirteenth meeting of the ATRP was however convened in Montreal from 1st to 4th September 2015.

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5. Civil Aviation Act 2006, Government Notice No. 45, Volume 93, Federal Government Official Gazette.

6. See Section 48 Civil Aviation Act 2006.

7. Cheng, B. (1962), The Law of International Air Transport, Stevens & Sons Ltd, London, Published Under the

A draft set of core set principles on consumer protection was sent to states for further consultation. These core principles aim at providing high level guidance to states for the three phases of the passenger / operator relationship. This is aimed at

establishing a fair competition scheme, a compendium of competition policies and practices[9].

The most relevant Articles of the Montreal Convention to this work are Article 17, 19, 20, 21, 22 and 29 which technically address the limits of liability contained in the Articles Convention particularly with respect to carriers liability for death or bodily injuries suffered or sustained by passengers in the international air transportation. The carriers are liable without proof of fault in event of death or bodily injury of a passenger caused by an accident on board the aircraft or in the course of any operation of embarking or disembarking for 100,000 special drawings (SDR).[10] In this regard, the carrier will not be able to exclude or limit its liability because the liability is strict.

However, where damages are sought by passengers in excess of 100,000 SDR the carrier is liable for unlimited damages when the passenger is able to establish and prove to the satisfaction of the court that the injuries suffered were as a result of the negligent act of the carrier.

According to *Christopher E. Coffer,*[11] there are three major contentious provisions in the Montreal Convention 1999; namely; Article 17 whose language represent the most extensively litigated aspect of the convention.

According to him, a cause of action for bodily injury falls within the confine of this section when the flight is international and when the accident occurred during the flight, or while embarking or disembarking. The term embarking and disembarking were not defined by the convention. It is left for courts to struggle to determine when a passenger begins embarking and complete disembarking for the purpose of Article 17.

In determining the actual time of embarking or disembarking, court usually focused on the following factors:

a. The passengers activities at the time of the injury

b. The restrictions, if any, on the passengers movement.

9. www.icao.int/sustainability/document/compendium.fair competition/compendium

10. Ibid at p. 92.

c. The imminence of actual boarding

d. The physical proximity of the passengers to the gate of the aircraft. For example, if the injury occurs over an hour before departure at a time when the passenger is free to roam the airport in court would conclude that the passenger was not embarking.

Courts tend to construe the term embarking and disembarking narrowly, and tend to require close spatial and temporal proximity to the flight. In the case of *Walsh vs. Koninklijke Luchtuaart Maatshappij NV*[12], the court found that a passenger who tripped and fell on a lowlying metal bar near the departure gate was embarking at the time at the injury. The court was of the view that, though the passenger had not submitted his boarding pass, but he was taking steps towards doing so by approaching the group of people assembled near the gate.

Even when an airline attempts to prevent a passenger from boarding a plane the passenger could still be said to be "embarking" under the present Article 17 at the convention. In the case of *Okeke vs. NW Airline Inc,*[13] the plaintiff passenger and her daughter were informed that they could not board the aircraft after a dispute arase concerning luggage fees. She attempted to board but was prevented from doing so by the airline employees. Where the police were called to the gate, the passenger fainted and was taken to a local hospital. The court concluded that the passenger was embarking because, she was at the gate ready to board the aircraft and she was physically blocked by someone at the aircraft door.

There are equally challenges as to the term of disembarking. A passenger who fell while walking up an inoperable escalator shortly after her flight arrived at the airport was held in the case of *Ug az vs. Am Airlines Inc*[14] to be disembarking. In that case, the passenger was climbing the escalation under the direction of the airline, who maintained the gate area and directed the passenger to customs and immigration. Thus, the court held that the passenger was not at the time a free agent roaming at will but was on the instruction of the airline.

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12. (2011) WL, 4344158 at 3, (SDNY), September 12, 20111.

13. Okeke vs. NW Airline Inc. (2010) WL. 780167, AT 5 (MDNC) 26.

Another important shooting area is Article 19 on the carriers liability for the flight belay. The key words in Article 19 are the delay and flight cancellations, following which passengers are not given another opportunity to reach their destination with the airline.

There are grey areas in the difference between a delay and flight cancellation for instance in *Fangbeng Fuondjing vs. American Airlines Inc,*[15] the plaintiff purchased roundtrip airfare from *Washington D.C* to Cameroon from the purpose of attending memorial services for a deceased relative. The flight already scheduled to leave at 4:00pm, did not depart until 5L30pm and the plaintiff missed the connecting flight and spent four nights without access to their luggages in the hotel room in Newyork and Brussels. They arrived Cameroon after the memorial services. The fang beng court held that the plaintiff's claim involved delay under Article 19 and that the plaintiffs claim involved delay under Article 19 and that the plaintiff had no claim for no-performance of the contract as the airline eventually transported the plaintiff to the destination.

The above decision is distinguishable from the case of *Paradis vs. Ghana Airways Ltd.*[16] where the court held that a passenger cannot convert a case of delay in

transportation into a common law claim of nonperformance. Thus, the plaintiff whose flight was cancelled and rather than waiting for the following flight, chased to board another available flight cannot claim for non-compliance as he did not give the airline the opportunity to complete the contact.

At the ECOWAS level, the community legal frame work of ECOWAS air transport was adopted on the 17th February 2012 by 9 supplementary Acts which include the supplementary Act SP3/02/12 relating to the common rules on liberalization of market access to round handling services in airports of ECOWAS member State. Supplementary Act A/SA/SP.4/02/12 relating to common Rules determining slot allocation at airports in ECOWAS states, supplementary Act SP10/02/12 relating to common. Rules on the approval of Air Act carriers of ECOWAS States, Act No. SP8/02/12 on the common Rules on the condition of access to air transport market in

15. 21, WL, 1375606, CD, md. April 12 2011.

16. Paradis vs. Ghana Airways Ltd, 3485 Supp. 2D 106 (Sdny 2004)

EXOWAS States, Act No. SP6/02/12 on common Roles of Tariffs applicable to passenger freight and mails for air transport within, from and to ECOWAS member States, Act No. A/SP5/02/12 relating to carriers liability in case of accident in ECOWAS States, Act No. SP9/02/12 on the common rules on compensation to passengers in the event of denied boarding. Cancelation or major delay of flights in ECOWAS States.[17] The aforementioned Acts variously established bilateral agreements among the member states whose aim is to promote mutual coordination in the air transportation system in the ECOWAS States.

Similarly, the Forty – Third (43rd) ordinary session of the Authority of Heads of State and Government of ECOWAS States held in Abuja Nigeria on the 17 – 18th July 2013, decided to:-

a. Entrust coordination and driving role of transport infrastructure sector, notably air transport in the hands of His Excellency Alassane Quattare, the president of the Republic of coted Ivoire.

b. Encourage pursuit of air transport liberalization measure, and large member states to ensure their effective implementation.

c. Direct ECOWAS commission to take all necessary steps to build institutional capacities for the attainment of the objective[18].

Thus, if the carrier cannot exonerate itself from the negligent act or series of acts that led to the accident, punitive, exemplary and or other non – compensatory damages may be claimed and recovered from the carrier. Accordingly, it is only on the basis of the Montreal Convention 1999 that passengers can institute an action for damages in respect of injuries so sustained in international air transportation.[19]

From the totality of most recorded accidents, it is difficult for the carriers to prove and establish on the preponderance of evidence that the damage sustained by passengers was not due to any negligent act of the carriers or their agent, or that the accident was caused solely by the negligence, wrongful action or omission of some

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17. ECOWAS Supplementary Act 2012 on Air Carrier Liability.

18. Dr. Paul Antoine Marie Ganemtore, Head of Air Transport Unit, EOWAS Commission, Aviation Executive Forum, 10th March 2013.

19. Montreal Convention therefore eliminated the language of Article 20 (1) Warsaw Convention that the

other persons[20]. It is recognized under the Convention that, National Laws may make provisions for advance payments to those entitled to claim compensation[21], and that such advance payments does not constitute recognition of liability or legal admission. As provided in the Warsaw Convention, the Montreal Convention also required the passenger to prove that he has sustained bodily injury,[22] at the point of embarking or disembarking the airline.

The Montreal Convention 1999 equally to some extent amended the provisions of the Warsaw Convention concerning claims for delay, loss of baggage and Cargo claims. With regards the flight delay, the liability of the carrier to the tune of 8,300 US Dollars under the Warsaw Convention has been reduced to 4,150 SDRS (approximately 5,685 US Dollars).[23] Although the defence of all necessary measures in the Warsaw Convention still remain in force in the Montreal Convention in respect of passengers, baggage or delay of Cargo. With respect to loss, damage or destroyed baggage, the airline's liability, unlike the Warsaw provision which premised same on the weight of the checked baggage, the Montreal Convention limits the liability at 4,150 SDR (approximately 5,685 US Dollars). The only exception to this provision arises when the passenger makes a special declaration at the time the baggage was handed over to the carrier and paid a declaratory sum thereon. However, for the purpose of legal competency to make a claim and pursue a cause of action, Article 31 of the Montreal Convention[24] wholly and substantially incorporated the provisions of the defunct Warsaw Convention to the effect that, for a passenger to be able to make claims for damages in respect of damaged checked baggage's, he must make the claim within period of seven days from the receipt of the baggage, and for delay, such a claim must be made within period of 21 days from the date on which the baggage or cargo have been placed at the disposal of the passenger.[25] The Civil Aviation Act 2006 represents

20. The Montreal Convention does not preclude the carrier from seeking redress against any other person whom it believes responsible for the damage sustained by passengers. Though this may be difficult under the laws of some countries where an indemnity or contributory action is precluded where the carriers liability is based on contractual rather than tort liability.

21. See Section 450 Civil Aviation Act 2006.

22. See Article 17 Montreal Convention and Article 21 Montreal Convention.

23. See Article 19 of the Montreal Convention 1999.

the major local legislation in Nigeria on Aviation. The Act Incorporated the Montreal convention 1999 as the 1st schedule to the Act.

3.3 Liability of the Civil Aviation Authority

The Nigerian Civil Aviation Authority, is a body corporate with perpetual succession created by section 2 of the Civil Aviation Act 2006. It is glaring and patently clear in the Act[26] that the Authority, members of its Board, its Director General, or any other employee of the Authority may be sued for any act done in pursuance or execution of any public duty under the Act or any law or enactment in respect of any alleged neglect or default in the execution of any public duty under the Act which neglect or default result in to injury or damage to anybody who has the capacity to institute an action. Although the Act did not specify whether the power to sue here is either civil or criminal, one can assume it is civil, since Section 174 of the 1999 Constitution still retained and remained the overriding Section empowering the Attorney General to institute and prosecute criminal cases on behalf of the state. Though individuals can only prosecute with an express fiat of the Attorney General.

If however, the assumption is right in holding the view that a right of action is created and established by the Act against the Civil Aviation Authority, its management and employee in civil cases, the pertinent question then is what constitute the cause of action to make the intendment of Section 24 so pertinent and enforceable?.

The Civil Aviation Authority in discharge of its duty has the power to issue, amend, vary, cancel, refuse and suspend any certificate and can validate and prescribe in such certificate terms, conditions and limitations as may be required in the interest of safety. It can also develop issue and amend airworthiness directives, bulletins, orders, terms and conditions to bring such directives into conformity with the prevailing airworthiness requirements. Most importantly, the civil aviation Authority has the power to monitor and supervise the conditions under which an aircraft may

26. See Section 24 (1) & (2) Civil Aviation Act 2006.

carry passengers, mail and cargo or under which aircraft may be used for other purposes and can prohibit an aircraft from the carriage of such classes of goods as the Authority may prescribe from time to time[27].

The aforementioned powers of the Civil Aviation constitute statutory duties imposed on the Authority, failure of which if resulted in to injury to any person, may engender a civil cause of action of tort of negligence against the Authority. The statutory duty inherently imposed on the Aviation Authority can be equated to the statutory duty of care needed to ground or establish a case of negligence against the carriers. For example, the Aircraft Investigation Bureau that Investigated the accident involving the Aircraft registered as 5N-ATE owned by Network Aviation Services which crashed at Igbogbo Village, Ikorodu, Lagos State on the 16th June 2001, had it on record that the aircraft was originally owned by Astro Surveys Limited, Kano, Nigeria, until 1993 when ownership of the Aircraft changed and the Network Aviation Services became the new owner[28] category" on the original Certificate of Airworthiness ought to have been According to the report, when the Aircraft changed ownership, the "private simultaneously changed from private category to multipurpose aviation category since the primary purpose of business of the new owner is not for aerial surveying profession but a multipurpose aviation business not including surveying profession. It therefore as it appeared on the report shown that the Network Aviation Ltd was actually operating the aircraft in the category which was in contravention with the authorization granted to the aircraft on its certificate of Airworthiness

The implication of this is that the certificate of Airworthiness of 5N-ATE should have been re-issued when the aircraft changed ownership in 1984[29], which necessitated the ownership name on the certificate of Registration to change from

Astro Survey Ltd to Network Aviation Services Ltd. This is strictly necessary as every certificate of airworthiness specifies such a category as is appropriate for the use of an aircraft and every certificate is issued on the condition that the aircraft shall be flown only for the purposes indicated on its certificate of airworthiness. Thus, the 5N-ATE aircraft with a certificate of airworthiness displaying "private category" was completely wrong to be

flying for the purpose of "Aerial work category" which is for hire and reward. In the same vein, a Nigerian registered aircraft, shall not fly if any part of the aircraft or its equipment as is necessary for the airworthiness of the aircraft has been overhauled, repaired, replaced or modified except a certificate of compliance has been issued that such maintenance has been performed on the aircraft and such certificate must be entered into the Aircraft logbook and signed by a licensed maintenance Engineer.

However, and in deviation from above requirement, it was discovered on investigations that the 5N-ATE Aircraft was sometime in June 1999 taken out of Nigeria to either Colchester in the United Kingdom or Accra, Ghana for extensive maintenance and there is no entry to that effect logged into the Aircraft logbook. It is therefore not certain whether the company that carried out the extensive maintenance and modification works on the aircraft was one of the maintenance organizations approved by the NCAA to work on Nigerian Aircrafts[30]. Notwithstanding this lacuna, the NCAA went ahead, and renewed the certificate of airworthiness for the aircraft for the period

between February 2000 and February 2001. This is a gross contravention of the Nigerian Civil Aviation regulation concerning mandatory logbook entries.

In the light of foregoing breach of duties mandatorily provided by statutes on the part of the Civil Aviation Authority, breach of which goes to the root of safety of the aircraft and air transportation, such breach of duties are weighty enough to constitute a cause of action against the Authority in favour of any passenger who may have sustained any injury or suffered any loss as a result of any aircraft accident caused or attributable to breach of the duties[31].

Consequently, it is not only neglect of statutory duty, but a gross manifestation of official recklessness for the Civil Aviation Authority to renew the certificate of airworthiness for the 5N-ATE Aircraft for the year 2000 to 2001 when, it is patently clear that the aircraft has been extensively overhauled and no record to such extent of overhauling was logged on the logbook. Although this is a grave error on the part of the surveyors who are the employees of the NCAA but the NCAA can be vicariously liable

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30. The surveyors of the Civil Aviation Authority (NCAA) according to the Bureau report erred and are wrong by re-issuing the certificate of airworthiness to the carrier under the private category regime – see page 16 of the Report. see also the civil Aviation Regulation of 1965.

accordingly[32]. Similarly, it is wrong and a sign of lack of prudence on the part of the Civil Aviation Authority to allow the 5N-ATE aircraft originally designated as private to be flying for an aerial service without re-issuing the certificate. This is also a breach of duty that engender liability and a cause of action against the Authority[33].

3.4 Liability of the Carriers in Tort

On the part of the Airline carriers, there is no doubt that the quantum of duty of care placed on them in favour of their passengers is enormous in the sense that the contractual relationship between a carrier and its passengers is for safe carriage or

landing at their various destinations. Where injury or damage caused to any person or property on land or water by an article or a person in or falling from an aircraft while in flight, taking off or landing, damages in respect of such injury or loss shall be recoverable against the carrier or the owner of the aircraft, although where the aircraft so involved in the accident has been bonafide demised, let or hired out to any person or authority by the real owner, it is required that, it becomes necessary to establish that the Pilot, Commander, navigator or operative members in the aircraft are employees of the real owner, otherwise, the hirer shall be considered to be the owner for the purpose of

liability in this respect.[34] Although, the liability in this context is strict in respect of third parties who are not passengers to the carrier but the statutory liability according to the wordings of the Civil Aviation Act 2006 against the carrier is in tort of negligence which has been painted a picture of strict liability.

Most importantly, the Act[35] made reference to the second schedule to the Act[36] with respect to the liability of the carrier in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage. Similarly, sub section 2 of section 48 of the Act having referred to third schedule of the Act pegged the liability of the carriers in respect of non-international carriage by air

32. See the case of R. O. Iyere Vs. Bendel Feed and Floor Mill Ltd (2008) 12 MJSC, 102 at 121 where the Supreme Court was of the view that when a master employs a servant to do something for him, he is responsible for the servant's conduct as if it were his own. If the servant commits a tort in the course of his employment, then the master is a tortfessor as well servant.

33. See also the final Report on the accident to Sosoliso Airlines DC9 – 32 aircraft registered as 5N-BFD which occurred at Port Harcourt Airport on 10th Dec 2005, referenced FMA AIPB/424 of July 2006 which the Accident Investigation and prevention Bureau reported.

34. See Section 49 of the Act.

within Nigeria, irrespective of the nationally of the aircraft performing the carriage and that of the passengers on board of the aircraft.

Further on this submission, it is pertinent to highlight the intendment of the relevant portions of the Modifications to the Conventions for the Unification of certain Rules relating to international carriage by Air (called Montreal Convention 1999) attached as 2nd and 3rd schedules to the Civil Aviation Act 2006.

According to the Rule,[37] the carriers are liable for damage sustained in event 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, and in respect of baggage's upon condition 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 charge of the carrier[38]. Article 21 of the Montreal Convention (1999) makes the carrier strictly liable to its passengers if the claims of the passenger does not exceed 100,000 SDRS, but where the claim exceeds 100,000 SDRS, the Convention required the passenger to prove that the damage, loss or injury sustained by him was due and as a result of negligent act or other wrongful act or omission of the carrier.

This provision of Article 21 of the Convention needs to be read in conjunction with paragraph 3 of section 48 of the Act which mandated the carriers to make advance payment of at least 30,000 US Dollars within 30 days from the date of an accident to the natural person or such natural person who are entitled to claim compensation for the passenger. The consequence of the two distinct provisions is to create strict liability in tort against the carriers in favor of the passengers to the extent of the sum of N100,000 SDRS[39] out of which 30,000 US Dollars shall be paid in advance. It is therefore established on the face of Article 21, Montreal Convention 1999 and sections 48 and 49, Civil Aviation Act 2006 that the carriers have been held strictly liable for their negligent act resulted from any aircraft accident to a certain extent, and can still be held liable to a

37. Particularly, Article 17 of the Montreal convention 1999.

38. However, the carrier is exempted from liability if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage.

larger extent by the passenger on proof of negligence. The next task therefore, is how to establish a wider claim of negligence against the carriers?

It has been held by the apex court that in negligence cases arising from accidents, the burden of proof falls on the Plaintiff who alleges negligence. This, according to the court is because negligence is a question of fact and not a question of law and it is the duty on he who asserts it to prove it by proving the particulars of negligence in his pleading and evidence[40].

To this end, Article 21(2) Montreal Convention 1999 was so emphatic on the evidential burden of proof placed on the Plaintiff to the extent that a passenger shall not be able to hold a carrier or any other stakeholders liable for damages exceeding 100,000, Drawing Right except he can establish that the negligence or other wrongful act or omission of the carrier or its servants or agent are responsible for the accident that resulted in to the injury.

For instance, Airframe and power plant manufacturers always prescribe how their products and other system components are to be maintained for the onward reliability and airworthiness of the aircraft. For this reasons, air frames life is usually broken into series of periodical maintenance, inspections and reliability checks, such as A - check which comes up on every 50 hours, of operation B – checks, C-checks and D-checks at the accomplishment of certain number of flight hours or at a certain number of calendar years in service, whichever comes first. Upon expiration of time lag the aircraft must be torn down into its certain basic structure and be duly inspected or maintained in accordance with a prescribed standard. Similarly, the maintenance lives of the Engines are scheduled for periodic inspections and maintenance requirement,

such as the time between overhaul (TBO), boroscope inspection of critical and sensitive dynamic parts within a turbine engine core[41].

According to AIB report reference No: 04/380,[42] Textron Lycoming incorporation, manufacturer of the power plant of the crashed aircraft manufactured the

40. See Ogbuagu JSC in Alh. Kabiru Abubakar vs. John Joseph (2008) 8 MJSC, page 1 at 34. See also the case of Ojo vs. Gharoro (2006) 5 MJSC, page 24 at 89-90 where the supreme court was of the opinion that in negligence cases a Plaintiff must not only plead particulars of negligence, he must lead evidence of the negligence.

41. TBO inspection entails that the engine of the aircraft be completely knocked down for detailed inspection, measurement of clearances to specifications and total replacement of some parts within the engine core and shell.

power plant which consisted of 2 in – line Horizontally reproaching engines type 10-360-AIB6, which were fitted to the airframe of the aircraft in 1981. After the crash in year 2001, a detailed and thorough investigation conducted by the AIB into the cause of the high temperature on No. 1 Engine as reported by the onset of the mishap after the Engine No: L–21196-51A was removed from the wreckage and disassembled in the AIB's workshop at Ikeja; Lagos revealed that this type of Engine is normally due for total overhaul after operating about 2,000 hours in service, and according to the service instruction No: 1009 AQ, the manufacturer recommends that, in the alternative, the Engine be overhauled periodically every 12 calendar years interval, whichever comes first. The aircraft (as at the date of Investigation) which was 20 years of age only flew 528 hours in its life time, but it has never been overhauled in the last 20 years. Accordingly, the overhaul should have been performed since 1993, but this was overlooked as at when due and the certificate of airworthiness was symbolically renewed.

Further investigation on No. 1 Engine revealed the following discrepancies which in the opinion of the AIB's experts are contributory to the initial problems of the Engine overheat, namely:

a. Intake Air Filter.

b. The Engine Oil Cooler.

c. Engine oil Pressure Hose.

In the light of the aforementioned scenario, it is patently clear that the findings of the Accident Investigation Bureau indicted the carrier and the Civil Aviation Authority to the extent that the faults that lead to the accident were shared between the carrier as a corporate entity and its pilots on one hand and the staff or employees of the Nigeria Civil Authority on the other hand.[43]

It is therefore on the authority of *Alh. Kabiru Abubakar & 1or vs. John Joseph & 1or*[44] that all the basic ingredients needed to prove and establish tort of negligence is readily on ground in favor of an aggrieved passenger against pilot, the carrier company

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43. (2008) 8 monthly judgment of supreme court, p.1 at 25 paragraph F – G

44. See Shogo Vs. Adebayo (2000) 14 NWLR Cpt. 686 p. 121. See also Nigilari vs. Mother Cat Ltd (1999) 13 NWLR, (pt 636) p. 626 where it was held that mere occurrence of an accident of not proof of negligence.

and the Civil Aviation Authority respectively. However, it is pertinent to state that claim of negligence, in accident cases is not granted by court as a matter of course but the Plaintiff has the onus of proof lying on him to prove who was actually negligent, whose negligent act actually and substantially caused the accident by determining whether or not that person could have avoided the accident by the exercise of reasonable care[45]. Accordingly, it is the duty of the Plaintiff passenger to prove his case against the defendant on the scale of preponderance of evidence or in consonance with the statutory requirement of section 134 of the Evidence Act 2011. In doing this, the Plaintiff (passenger) must establish that a cause of action is constituted in his favour by bundle or aggregate of facts which the law will recognize as giving him a substantive right to make the claim against the relief or remedy being sought.

Thus, the factual situation on which he (the Plaintiff) relied upon to support his claim must be recognized by law as giving rise to a substantive right capable of being claimed or enforced against the defendant. i.e. the factual situations relied upon must constitute the essential ingredients of an enforceable right[46].

3.5 Liability in Contract

Air transportation is founded on the contract for transportation of goods and passengers, in which case goods or passengers are transported to other destinations or other countries either in container or ordinary cargo. Contract of International sale of goods are usually intertwined with other contracts under which goods or passengers are transported or exported e.g. the contract of insurance by which goods and passengers are insured.

In practice, it is not difficult to determine whether a contract is for carriage of goods, or passengers because the terms of contract usually contained provisions dealing with the place of delivery of the goods or passengers and the mode of transportation to the place of destination.

Also, the rights and duties of the contracting parties vary greatly depending on their persons or private arrangement as to place, method of delivery and payment.

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45. The See Hon. Justice Aloysius Iyorgyer Katsina – ALU JSC in the case of Chevron Nig. Ltd. vs. Lonestar Drilling Ltd. (2007) 10 MJSC, p. 103 at 116 – 117 paragraph E – A.

46. The carrier may accept the goods with its values cleared for carriage, but the shipper must prove this value in form of document stating such value such as invoice or a declaration upon which a valuation charge

transport delivery document i.e. the Airway Bill or ticket plays an important role in the performance of the carriage contract. Usually, the shipper or his agent submits the shipper letter of instruction to the carrier for airway bill to be issued and the carrier acknowledges acceptance of goods for carriage by retuning the confirmed original of the air way bill. The carrier has the right, in the presence of the shipper and airport

security or customs Authority to check contents of the shipment submitted for his transportation.

The shipper equally has the right not to accept shipment if it cannot be inspected. Where goods are insured under the air waybills, with the shipper providing proof of the value of goods with an invoice or declaration, the shipper pays premium and the amount of insurance and premium must also be entered in the air waybill. Where the shipper does not specify the route to be used or the air carrier to carry the goods in the air waybill, the carrier shall determine the route and the manner of shipment. It must be stated that the departure and arrival times as printed in the carriers time table is not considered as part of the contract of carriage. However, where there is cancellation of flight due to reasons beyond the carriers control such as force majeure;- a situation whereby a contract is rendered unperformable due to no fault of either party e.g weather conditions, war, strike of carriers organization etc. the carrier may delay. It is therefore settled that the relationship between the Air transport or Air carrier and his passenger or consignee is purely contractual and can be said to be governed by the general principles of law of contract breach of which can be remedied accordingly. This necessitated the decision of court of Appeal in *Harka Air Services (Nigeria) Ltd vs. Emeka Keazor Ese.*[47] The plaintiff, a legal practitioner was a passenger transported on board the defendant appellant's aircraft TU 134 on a domestic route from Kaduna to Lagos on 24th June, 2005. While the Aircraft was landing at the Airport, Ikeja, Lagos, it violently hit the tarmac and caught fire hence the crash. As a result of the Accident the Plaintiff/Appellant claimed to have sustained injuries and lost of his personal effect, hence the Plaintiff suit against the defendant before the Federal High Court, Lagos claiming the sum of five Million Dollars. Although judgment was entered in favor of the Plaintiff/Respondent in a lesser sum, the court of Appeal held that:

47. (2006) I, NWLR, pt. 960 p. 160 at p. 184 – 185.

It is not in controversy that the action or claim before the lower Court was based or predicated on the contract of carriage between the Plaintiff and the Defendant Airline company.

It is therefore apparent that the relationship between passengers and air transport carrier is contractual in nature and all elements, terms and conditions of ordinary contract are attributable to the relationship. To this end, the most pertinent question is when can the contract of Air carriage be breached, particularly when there is an accident and what are the cause of actions through which an aggrieved party in the contract can pursue to remedy his grievances?. It is a common knowledge that a contract is generally breached when one of the parties thereof has broken any of the terms of such contract as a result of which a party sustained loss or injury[48]. It can therefore be inferred that the ultimate end in the contract of air carriage stem out of the duties and obligations of the carrier particularly with regards safe delivery of passengers and luggages which are subject matter of the contract.

Thus, loss of goods, death or any bodily injuries suffered by a passenger as a result of an accident which occurred while on board of aircraft operated by the carrier can be attributed as breach of safe delivery of the affected passengers or their goods which is envisaged and considered the ultimate end result of a contract of air carriage.

It is trite however, that once a party to a contract establishes to the satisfaction of a court of law that the other party has committed a breach of contract, the most common claim is that for damages and certainly it is the most readily granted type of remedy granted by courts[49].

For an injured or aggrieved person to commence and succeed in an action for breach of contract of air carriage, such a person must prove and establish that there is a valid and prima-facie contractual relationship between him and the carrier being sued as Defendant. i.e. There is offer, acceptance and consideration[50]. An offer can be

identified as a definite undertaking made with the intention that it shall become binding on the

48. See Omega Bank Plc Vs. OBC Ltd (2005) 2 MJSC, 26 at 48 where the Supreme Court held that there are three essential ingredients of a valid contract namely; an offer, an unqualified acceptance and a consideration.

49. Supra at p. 63

person making it as soon as it is accepted by the addressee of the offer[51].

A validly contracted contract of air carriage can be breached in any of the following circumstances:

a. Delay

b. Loss or Damage of Goods

c. Loss of Life

Although, the relevant provision of Warsaw Convention does not define what constitute "bodily injury" it seems that to satisfy this condition, the clamant must satisfy the court that the passenger died or suffered physical injury from the accident thus, psychological disorder, emotional distress or trauma may in the absence of medical evidence as to physical damage to the brain cell or any other part of the body not be sufficient to ground the carrier liable under this provision for bodily injury.

3.6 Liability in Insurance

It has now become inevitable that in the course of daily social interactions, the pursuit of a person's interest is bound to be in conflict with those of others. Such conflicts may give rise to losses or damage in form of bodily injuries, loss of or physical damage to property, financial loss or damage to reputation. The law on liabilities of

individuals limits the scope of conduct which can be tolerated by society, hence the legal liability is concerned with the redistribution of losses so that losses are borne by those who caused them[52].

Legal liabilities such as that of an Air carrier to his passengers therefore is insurable in form of third party insurance. Although such a policy is for the benefit of third party, nevertheless the third party cannot generally speaking, directly enforce the contract as a result of the principle of Common law under which a person who is not a privy to a contract can neither sue to assert a right, nor be subjected to any obligation under the contract. A third party therefore is a stranger or an alien to the contract of insurance who cannot enforce the contract by himself even though such a contract

51. See the case of pahalpina international transport vs. Densil underwear (1981) 1 Lyoyds Rep 187, where it was field that 19 days was not reasonable time in which to deliver a Cargo of Shirt by air from the United Kingdom to Nigeria and that failure on the part of the carriers to prove that they taken "an necessary measurers" to avoid the delay can hold them liable. See also Article 19 of the Montreal Convention.

52. See Thomas Chukwuma Makwe vs. Chief Obanna Nwukor (2001) 6 MJSC page 179 at 188 – 189 where the Supreme Court patently held that a stranger to a contract can neither sue nor be sued on the contract

made for his benefit[53]. However, the doctrine of privity of contract according to the supreme court's decision admits a number of exceptions which includes the case of a contract made by an agent on behalf of an undisclosed principal, who again as a general rule is entitled to sue and liable to be sued on such a contract[54]. Though under contract of insurance, a tortfeasor or contracting party may pass to an insurer the damages he is obliged to pay and thereby save himself the financial consequences of his tort or breach of contract. To this end, the Civil Aviation Act 2006 required that "any carrier operating air transport services to, from or within Nigeria, or aerodrome operator, aviation fuel supplier, or any provider of ground handling services, or provider of such other classes of allied services as the authority may from time to time determine in writing shall maintain adequate insurance covering its liability under the

Act and also its liability towards, compensation for damages that may be sustained by third parties for an amount to be specified in regulations made by the Authority[55].

This requirement of Insurance cover by the air carrier is a condition precedent upon which air operators are required to provide a quarterly report to the Civil Aviation Authority evidencing that such adequate insurance is maintained and that all conditions necessary to create an obligation on the insurer to provide indemnity in the event of a loss have been fulfiled[56].

In the light of the principle of privity of contract, it becomes expedient to examine how an Insurance Company (who is not a party to a contract of air carriage) can be held liable by the passenger in a 3rd party proceeding to enable the passenger lay claim to the Insurance claims put in place by the carrier in possession of the Insurance Company?.

Applying this common law doctrine of privity of contract to Insurance contract, it is patently clear that a 3rd party cannot maintain a claim in law or equity against an insurance company and cannot join such insurance company as a party to any claim

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53. Supra at Note 69.

54. See also liberty Insurance Co Ltd vs. Mrs. U. JHON (1996), NWLR, Part 423, p192.

55. See Article 22(1) & (2) of the Convention for the suppression of unlawful seizure of aircraft embodied as 1st schedule to Civil Aviation Act 2006 where the passengers are to be paid compensations by the carrier for delay or loss of Baggage's. Similarly Articles 21(1) of the same convention on the liability of carrier for loss

against the insured (the air carrier). Although the Supreme[57] appraised the provision of Section 10 of the Motor Vehicles (Third Party) Insurance Act Cap. 126, Laws of the Federation of Nigeria 1990 and held that the Insurance Company cannot be sued nor joined in a suit against the carrier, but as a saving ground, the Insurance Company can be sued by a way of 3rd party proceeding based on contact of indemnity.

Another conflicting provision on this point of law is Section 68(1) of the Insurance Act No. 2 of 1997 which provides:-

> *Where a third party is entitled to claim against an Insured in respect of a risk insured against, he shall have a right to join the Insurer of that risk in an action against the Insured in respect of the claim.*

Notwithstanding this provision, legal practitioners representing third parties are still finding ways of convincing judges of reasons why an Insurance Company can be joined by a third party. Each attempt at joining an Insurance Company by a Plaintiff third party always meet brick wall as Courts often refuse the application on the ground that it was not necessary to join the Insurance Company before the said Insurance Company could be made liable to indemnify the respondent[58]. All that was required, according to the Court, was to give the Insurance Company due Notice of the proceedings as required in the Insurance Policy[59].

Aviation Insurance is essentially connected with carriage of both goods and passengers. The practice of aviation Insurance largely follows the same law as marine, hence the proposal forms are not used for aircraft Insurance, but the detail of risk proposed are entered on a sheet which is passed round the market. Each underwriter takes a share and the leading underwriter negotiates the Insurance and arrive at a decision which is binding on the other participating underwriters.[60]

The main types of Aviation Insurance are comprehensive cover policy, personal Accident Insurance, Cargo Insurance, Loss of Use Insurance for Aircraft Hulls. Airport Liability and Products Liability Insurance.

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57. Andrew O. Ajufor Vs. Christopher Ajarbor & ors (1978) 6.7 SC page 39 at 52.

58. Ekerebe vs Efeizomor (1993) 7 NWLR, part 307, page 588.

59. Section 73 (a) of the Insurance Decree 1997 which stipulates that no sum shall be payable by the Insurance Company under the provision of Section 73(1) in respect of any judgment unless before seven days after the commencement of the proceedings in which the judgment was given the Insurer has notice of the proceeding".

The comprehensive Insurance covers accidental damage to aircraft including damage by fire, legal liability for injury or damage to persons or property in the ground and liability to passengers for personal injury or damage to their personal effect. The personal accident Insurance usually covers air crew, pilot, the operator, the air hostess, aircraft doctors and engineers. Passengers make individual arrangements either for a contract for each fight or by means of personal accident policies which cover such passenger while on board the aircraft or on the ground[61].

Cargo Insurance covers safety of the goods either on each consignment or series of consignments. This type of Insurance can be effected either under a declaration policy or open cover[62]. The loss of use of Aircraft Insurance covers consequential loss such as loss of revenue where an aircraft is laid off following an accidental damage[63].

The concern here is comprehensive cover where liability to passengers for personal injury, death, or damage to their personal effect are legally protected and guaranteed which consequently engendered third party claim. Section 49(2) of the Civil Aviation Act 2006 needs to be read jointly with Section 74(1) of the same Act. The cumulative effect of the two Sections therefore is suggestive of the fact that there is a valid third party's right against Insurers of an accident aircraft in Nigeria particularly when the air carrier involved in the accident fails to comply with the provision of Section 49(2) and other relevant provisions of the Act.

3.7 Issues and Challenges on the Liability of the Carriers

There is no doubt that challenging issues are inherent in the liability of the carriers which ordinarily brought forth various questions needed to be answered one way or the others either by statutes or judicial pronouncement.

The question as to who is liable in relation to a commercial airliner is not ambiguous as the wordings of section 48(1-3) is unequivocal in relation to the liability

61. For instance in America or United Kingdom, there are slot machines from which tickets for an Insurance are obtainable which gives the passengers the opportunity to obtain cover against fatal accident. No such opportunity in Nigeria, but the Insurance Companies are ready to accept such policy wherever an offer is made.

62. Under an open cover, an Insurer may agree in advance to cover consignments all goods up to an agreed

of the carriers of the commercial airlines to the extent of the damage sustained in case of

death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.[64]

The operative word here is the word “passenger”. Who then qualifies to be a passenger? Section, 48, 49 and 71 of the Civil Aviation Act 2006 made copious references to the word passenger which ordinarily is expected to be defined under section 78 of the Act. However, Section 78 which is the definition section of the Act patently omitted the definition of who is a passengers.[65]

A passenger therefore is defined as one a traveler riding in a vehicle, a boat, or bus or car, or plane or train etc who is not operating it. It is therefore imperative to note that one must be a passenger to quality to benefit from the liability of an air carrier as a result of injuries sustained in an aircraft accident.[66] It is at this juncture, the liability of passengers in a private airline, state airline and non – ticketed passengers become issues.

For further elucidation, there is need to consider position of air ticket and airway Bill in relation to passengers and carriers liability in an aircraft accident. Article 3(1-4) of the Modification to the Convention of Certain Rules Relating to International Carriage by Air required every passenger in an aircraft to deliver a document of carriage which shall contain among others indication of his place of departure and

destination. This Ticket is expected to be delivered to the passengers by the carrier in any form or manner as may be prescribed by the carrier.[67]

Article 4 of the same law provided for airway Bill which is a record of the carriage to be performed and particulars of the carriage, parties and the cargo. The airway Bill is expected to contain indication of the places of departure and destination, in dictation of the weight of the consignment etc.[68]

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64. Article 17, modifications to the convention for the unification of certain Rules Relating to International Carriage by Air, third schedule to the Civil Aviation Act 2006. See also the case of *Harka Air Services Ltd vs. Keazor (2011) 13, NWLR, pt. 1261 at p320*.

65. Advance English Dictionary.

66. See Articles 20 & 21, Unification of certain Rules relating to international carriage by air (Montreal Convention 1999), 2nd schedule to the Civil Aviation Act 2006.

67. See Article 3 modification to the convention for the unification of certain rules relating to international

The imperative of the issuance of the passenger ticket and the airway Bill receipt to the passenger as cumulatively provided in Articles 3 & 4 of the war saw convention required an air passenger to procure and obtain an air ticket or an airway Bill from the carrier to qualify them as legal passengers for the purpose of being paid compensation by the carrier or for the purpose of making the carrier liable for loss, damage and death affecting them in the course of the carriage.

To this end, it now becomes pertinent to determine the passenger ship of passengers in a private aircraft and those in a state aircraft who are not paid passenger and do not have passenger tickets or air way Bill to establish the legality of their passenger ship. It is equally not yet clear whether one must be a legally ticketed

passenger in an aircraft before he can enjoy the compensation regimes in the aviation disaster.

In examining the above stated exposition, one needs to examine the relevant provisions of the Civil Aviation Act 2006 and juxtapose them with the relevant provisions of the international laws which were contained in schedule one, two and three of the Act.

The wordings of section 48(1-3) of the Civil Aviation Act 2006 seems general and all encompassing and required ordinary meaning and interpretation because there is not ambiguity inherent therein.[69] The liability regime in this section is general in form and nature to accommodate all passengers whether of commercial aircrafts, private aircraft and even state aircrafts. However, it is apt to point out differences and contradictions between the provisions of section 48 (1-3) of the 2006 Act and Article 3 & 4 of the International Convention on Modification to the Convention for the unification of certain rules relating to international carriage by Air. While section 48 generalizes the qualification of passengers, article 3 & 4 of the convention provided for Air ticket and Airway Bill as a qualification and condition precedent for passenger ship.

To settle this contradiction, one can safely argue that the provisions of the convention for the unification of certain rules relating to international carriage by Air having been ratified and domesticated as part and parcel of the Civil Aviation Act 2006 as schedule two remained a National legislation that cannot be distinguished from other provisions of the 2006 Act. Accordingly, there seems no ambiguity to warrant a likely supremacy between the two laws.

69. Associated Discount House Ltd Vs. Amalgamated Trustees Ltd. (2007) 10 MJSC, p81-82 where the apex court was of the view that where the words in a statute are clear and unambiguous, there is nothing for the court to interpreted than to give the words their ordinary meaning.

3.8 Liability in the State Aircraft and Gratuitous Air Carriage

It is not uncommon in Nigeria to have unpaid passengers in an aircraft who ordinarily may not procured nor obtained any air ticket to sustain their status as

passengers in the aircraft. Examination of Article 3 & 4 of the third schedule to the Civil Aviation Act, seem suggestive that those classes of people are not beneficiaries of the compensation scheme provided in the Act.

However, Article 1 (1) of the 3rd schedule to the Act is unequivocal to the extent that the convention applies to all carriage of persons, baggage or cargo performed by aircraft within Nigeria as well as gratuitous carriage by aircraft undertaking. The word undertaking used in Article 1 (1) of the 3rd schedule to the 2006 Act though not defined by the Act, was defined by the Black's Law Dictionary as a promise, pledge or engagement.

Going by the Black's Law definition of the word "undertaking" it is arguable that a gratuitous passenger must be a passenger officially known to the carrier with an understanding that the carriage was purely free or with a promise from the passenger that he pays for the carriage at a later date. Accordingly, an illegal gratuitous passenger who did not have an undertaking with the carrier in any manner may not be a beneficiary of this provision.

70. Section 12 (1-13) of the constitution of the Federal Republic of Nigeria 1999 as amended.

CHAPTER FOUR

LEGAL REGIMES ON COMPENSATION FOR AIRCRAFT ACCIDENTS IN NIGERIA.

4.1 Introduction

Compensation means payment of damages, making amends; that which is necessary to restore an injured party to his former position. It is an act which a Court orders to be done,[1] or money which a Court orders to be paid by a person whose act or omission, have caused loss or injury to another in order thereby the person so indemnified may receive equal value for his loss or be made whole in respect of his injury[2].

The problems that called for attention in this research are the non-definite statutory provision for compensation for ground victims, the statutory and evidential value of the Accident Investigation Report (AIR) for the passengers who want to claim damages or higher damages. Similarly, non definite or minimum compensation regimes for passengers who sustained injuries and the time and mode of payment of compensation to families and relations of deceased victims are part of the problems in this research.

Consequently, the objectives of this paper are to examine the law governing compensation of accident victims with a view to proffer better solutions to the inherent problems, to identify those that are entitled to compensation, the conditions precedent before payment of compensation in an aircraft accident, and how compensation is assessed and mode of payment of compensations to the victims.

4.2 Nature of Compensation on Aircraft Accident Victims

Compensation or damages is not paid as a matter of course. There has to be a breach of somebody's right either in contract, in tort or under statute and in an attempt to pacify the party so injured and making him to feel as if no injury was caused to him or in an attempt to cushion the effect of the injury so caused to him, the concept of compensation comes in to fore.

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1. Bryan A.G. (2009) *Black's Law Dictionary,* 9th Edition, p377

2 *Rail Road Company v. Benigan* 10 Miss 358 (Gil 208)

In the sphere of damage caused as a result of aircraft accidents which result in to payment of compensation, it is not out of context, to ask the question who is entitled to be compensated?. Is it the passenger who is injured, the family of a passenger who lost his life in the accident and, or a non-passenger who lost his property or suffered injuries as a result of the crash?

Article 21 of the Montreal convention specifically provided for the payment of compensation to the tune of 100,000 us Dollars to each of the passenger whose life was lost or sustained serious injuries as a result of injuries sustained pursuant to Article 17 of the Convention. This Article further maintained that carriers shall not be able to exclude or limit its liability in this direction in as much as the passenger is sustained the injury or died within the provisions of Article 17 of the convention.

Pursuance to the compensation regime created under Article 21, Article 28, desired the carrier to make advance payment of which must be paid without delay to natural persons who are entitled to compensation in respect o the affected passengers to meet the immediate economic needs of the passenger. This provision was quick to add that such payment must not be constructed as a recognition of liability as same may be offset against any amount subsequently paid as damages by the carrier.

However, the provision of Article 30 of the convention in an attempt to establish legal basis for claiming or benefiting from the compensation, stated that claim against the carrier can only be brought subject to the conditions set out in the

convention and without prejudice to the question as to who are the legal right to institute action against the carrier. This provision, in effect, disregard the doctrine of common law of privity of contract. This is to the benefit of the passengers.

In the same vein, Article 19 further restricted the claim of the passengers to the extent that, punitive, exemplary or any other non-compensatory damages are not recoverable.[3]

The quantum of damages payable to families of the passengers who lost there lives in the aircraft accident is the only leg of compensation which is statutorily settled by the Civil Aviation Act 2006, while that of the deceased ground victims and those with mere injuries are not provided for by the Act. In the same vein, the common law

3. See Articles 21, 28 and 29 of the Montreal Convention 1999

allows payment of compensation for passengers and non-passengers who sustained psychological or emotional distress as a result of an accident such as aircraft accident. This is equally not considered by the Civil Aviation Act.

According to Paul Antorne Marie Ganemtore,[4] in tandem with the 1999 Yamoussoukro Decision, air Cargo is a part of the air services quoted in the four ECOWAS air transport supplementary Acts adopted on the 17th February 2012 as follows:

a. Supplementary Act A/SP.3/2/12 on the common Rules on the liberalization of market access to ground handling services in airports of ECOWAS State.

b. Supplementary Act A/SP8/2/12 on the conditions of access to air transport market in EXOWAS States.

c. Act No. SP11/2/12 on Rules on aviation security in ECOWAS States.

d. Act No. SP6/02/12 on Tarriffs applicable to passengers, freight, and mail for air Transport within, from and to ECOWAS States

Similarly, at the 2nd session of the African Union Conference of Ministers responsible for transport held at Wanda Angola on the 21st – 26th November 2011,[5] variously examined and reached biolateral agreements on various aspects of air transportation such as aviation safety, aviation security, aviation regulation and legislation fame work, all with a view of having a uniform system of liability regime among other aspects on Africa.

At the 3rd session of the African Union Conference of African Ministers of Transport held at Malabo, Equotoria Guinea, on the 7th – 11th April 2014,[6] African Ministers on Transport proposed and agreed on various forms of issues relating to air transport system in Africa ranging from settlement of Aviation disputes mechanism and consumer protection rights.

It is pertinent to briefly analyse the legal basis of compensational scheme in the Montreal Convention 1999, particularly articles 21, the liability of the carrier strict in favour of the passenger, limited such liability to the tune of 100,000 Special Drawing Right (SDR)

However Article 21(2) further itemsed the basic requirements which a carrier must prove as a defence to exonerate itself from damages arising under paragraph one of the Article 17 which exceeds 100,000 SDR as follows:-

a. That such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants.

b. That such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 28 specifically required an advance payment to the natural persons who are entitled to claim compensation in order to meet immediate economic needs of the families of the late passenger. The operative word in the Article is payment without

4. The head of the Air Transport Unit, EXOWAS Commission on Air Cargo in ECOWAS Region at Lome, Togo on the 5th – 7th August 2014.

5. African Civil Aviation Policy AU/TPT/EXP/2A2/(1)c

delay, which ordinarily required the deposit of 30,000 US Dollars payable under the provisions of the Civil Aviation Act 2006 to be paid within the time lag of one month. In practice however, this has never happened in Nigeria, as such payment is usually paid much behind schedule.

At the Aviation Executive Business Forum, ECOWAS Region, held in Lagos Nigeria on 16th March 2015, Dr. Paul Mark[7] the head of Air Transport unit, EXOWAS Commission stated that the legal frame work of ECOWAS air transport was adopted on the 17th February 2012, by the 9 Supplementary Acts which among others include Supplementary Act A/SP3/02/12 relating to the common Rules on air carrier liability in case of accident in ECOWAS Member State and the Supplementary Act A/SP6/2/12 on the common Rules on compensation to passengers in the event of denied boarding, cancellation or major delay of flights in ECOWAS Member states. The same 9 Air Transport Supplementary Act 2012 was adopted on the 17th February 2014 by the ECOWAS Authority of heads of State in the 3rd session responding to air cargo challenges. At the executive session in 2014 the ECOWAS Heads of States in a bid to liberalize the air Transport system in ECOWAS region. Members were encouraged to pursue the ECOWAS Liberalisation measures and ensure its effective implementation, with a view to enable the ECOWAS Commission to take all necessary steps to build institutional of the ECOWAS air transport liberalization objectives.

7. Air Transport in EXOWAS Region, ECOWAS presentation @ Aviation Executive Forum accessed on the 19th November 2015.

To this end, at the 1st meeting of the Air Transport Committee held in Banjul, Gambia from 21st – 23rd October 2013, approved, a 2014 – 2020 Air Transport action plan including intergration based projects on, air transport liberalization, regional aircraft leasing company, regional aircraft maintenance facility, coordination of air navigation service providers, regional policy on aeronautical charges, aviation training and aviation safety and security.

The objective of the Air Transport subsector of the ECOWAS is to implement the Yamousoukro Decision for air transport liberalization, enhance the capacity building for the Civil Aviation Authorities within the region, facilitate the operation and cooperation of the West African Airlines and other relevant stake holders.[8]

As a consequence and follow up to the implementation of the 9 supplementary Act adopted on the 17thy February 2012 relating to air transport economic regulation, ground handling, slot allocation, denied boarding, approval of air carrier, market access, Air Tariffs, liability of Air carrier in case of an accident, exemptions to rules of competition, aviation security etc, a meeting of ECOWAS / UEMOA / World Bank was held on 10th and 11th July 2013 in Abidjan, the 43th summit of the Authority of Heads of state of government, held on the 17th July 2013 made commitment to fast track implementation of the Acts in West Africa, which includes coordination meeting ECOWAS / ECAC in Montreal Canada on 30th September 2013 for the implementation of the MOU on Civil Aviation Signed on the 11th July 2013, participation in the ICA/6th World conference on Air Transport in Montreal, Canada from March 18th – 22nd 2013,

participation in the 23rd plenary session of the African Civil Aviation Commission (AFCAS) in Accra from 2nd – 5th April 2013, participation in the ICAO Assembly in Montreal Canada from 24th September 60 4th October 2013 etc.

4.2.1 Passenger Victims

A passenger is a traveler on a public or private conveyance other than the driver, pilot or crew[9]. A passenger does no or less work in a car, bus, train or plane compare with the driver, crew of an aircraft and the pilot.

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8. ECOWAS mail.github.io/ecowas-sectior/infrastructure/index.ltm.accessed on the 17th November 2015.

It is assumed there is either direct or implied contract of carriage between the driver or pilot who offers to carry his passenger and the passenger who agrees to be

conveyed, carried or airlifted by the driver or pilot. Hence, there is a contractual relationship of carriage by air or a motor vehicle. Accordingly, a passenger who is involved in an accident may claim either under the liability insurance coverage of the pilot or owner of the aircraft involved in the accident or under the coverage of the *tortfeasor* who caused the accident. He cannot collect from the two. If however one pilot or owner does not have enough insurance to cover the total damages of a passenger, the passenger can make up the rest against the other. The passenger's claim is strict whether any of the pilots or owners is at fault or not, the important factor for consideration is that the passenger is not at fault.[10]

For the purpose of aircraft accident therefore, a person only qualifies as a passenger when he boarded the aircraft, wounded or suffered bodily injury, the injury must have arisen from an accident and the accident must have occurred on board the aircraft or during the course of embarking or disembarking from an aircraft.[11]

It worth's mentioning that the carrier is under obligation to deliver a ticket to the passenger and the ticket is expected to contain the following particulars:

a. The place and date of issue.

b. The place of departure and destination.

c. The agreed stopping places, provided that the carrier may reserve the right to alter the sopping places, in event of necessity.

d. The name and address of carrier or carriers.

e. A statement that the carrier is subject to the rules relating to liability established by the convention.[12]

However, a passenger who has no ticket, or who has an irregular ticket or who has lost his ticket and boarded an aircraft is equally a passenger for the purpose of

been entitled to payment of compensation. Thus, if a carrier accepts a passenger without a

10. Agada J.A.O, *Appraisal of Liability and Compensation in the Aircraft Accident* (2009) Journal of Contemporary Legal Issues, volume 1, No.1, 2009, p.140-146.

11. Uwarkwe C E, *Introduction to the Aviation Law in Nigeria*, (2006), Aviation Publishing and Consultancy Co. Ltd, p148. See also Article 17 of the Warsaw Convention.

passenger ticket having been delivered, the carrier shall not be entitled to avail itself of provisions of the convention that excludes or limit its liability.[13]

In some jurisdictions like U.S. and U.K, the delivery of the ticket to the passenger is now considered mandatory to enable him to take adequate notice of the liability limitation. Thus United State of American for instance, the court of appeal in the case of *Mertens vs Flying Tiger Line*[14] held that ticket should be delivered to the passenger in such a manner as to afford himself against the limitation of liability and that such protecting, measures could include the decision to take the flight, entering into a special contract with the carrier, or taking out additional insurance for the flight.

A passenger in an aircraft accident is entitled to compensation as a statutory right and also as a contractual party under the common law principle of privity of contract.[15] The cumulative effect of sections 48, 49 and 71 (1) of the Civil Aviation Act[16] entitles a passenger to be compensated for injury, damage and loss of life or property. The claim and the passenger's entitlement to compensation was strengthened by section 48 (3) where in case of aircraft accident resulting in death or injury of passengers, the carriers shall make advance payments of at least £30,000 US Dollars (equivalent to N3,000,000.00) within 30 days from the date of such accident to the natural person or such other persons who are entitles to claim compensation in order to meet the immediate economic needs of such person.

Section 48 (1) & (2) specifically state that provisions of the Convention for the Unification of Certain Rules relating to international carriage (i.e. the 1999 Montreal Convention), therein contained as the 2nd schedule to the Civil Aviation Act 2006 shall govern the rights and liabilities of the carriers, passengers, consignors, consignees and other persons in relation to the aircraft accidents and transactions.

Thus, Articles 17 and 21 of the Montreal Convention 1999 cumulatively provided that the carrier shall be strictly liable to pay compensation not exceeding the sum of 100,000 Special Drawing Rights (SDR^S) to the families of each passenger who lost his life as a result of an aircraft accident provided the accident occurred when the passenger was embarking or disembarking from the aircraft.

13. Article 3 (2) of the Warsaw Convention.

14. US Court of Appeal (2nd Air) February 16, 1965, Avi, Vol. 9, p 17, 475.

As a follow up to this strict liability of the carrier, section 48 (3) of the Civil aviation Act 2006 further provided that an advance payment of Thirty Thousand United State Dollars (equivalent to Six Million Naira) shall be paid to family and relation of each of the deceased passenger within thirty days from the date of the accident.

Section 49 is to the effect that any injury, caused to a person or property on land or water by an article or person falling from an aircraft while on flight, taking off or landing shall be recoverable without proof of negligence. This provision establishes cause of action against the carriers in favour of ground victims and owners of the properties on the grounds.

4.2.2 Ground Victims

A victim is a person who is harmed or killed by another, a person who suffers from a destructive or injurious action or agency, a person harmed, injured or killed as a result of a crime, accident or other event or action. He is also a person who has come to feel helpless and passive in the face of a misfortune or ill treatment.[17]

It is common that when an aircraft accident occurs, the air plane or any object there from may likely fall on somebody or on some property on the ground causing damage on such persons or properties on the ground. The fact strictly remains that there is no common law of privity of contract between the aircraft owner and a person or owners of properties on ground to warrant breach of contract which can press home the claim of contractual compensation. However, it is not certain that the pilot of an aircraft owes a duty of care to the person on ground and their properties.

This is even notwithstanding the statement of the Lord Denning to the effect that it is not every consequence of a wrongful act, which is the subject of compensation.[18] The law has to draw a line somewhere in such a way that, some time it is done by limiting the range of persons to whom duty is owed, or by saying that there is a break on the chain of causation, or that the consequence is too remote to be head of damage.[19]

Lord Artkin in the famous authority of *Donoghue vs. Stevenson*,[20] was so categorical to the effect that in English law, there must be a general conception of relations giving rise to a duty of care, of which a particular case can rest upon and that judges must be cautious in making use of the general conception as same is too wide in some instances to fit in some cases. Consequently, courts have now evolved signposts or guidelines or relevant considerations involving such notions as neighbours, control, foresight, proximity, opportunity for intermediate examination, deeds or words, the degree and kind of risk to be guarded against.[21]

17. Oxford dictionary, (2014) oxford Dictionary University Press, p616.

18. *Campany Financier Soleada S.A vs. Hamoor Tanker Corporation Inc.* (1981) 1 WLR, p274 at p281.

19. See per Lord kinnear in Black vs. Fife Coal Co. Ltd (1912) AC. 149, at 159.

However, section 49(2) of the Civil Aviation Act 2006 created a cause of action in tort of negligence in favour of any person who sustains injuries or owners of damaged properties against the owners or operators of the aircraft. The cause of action so created herein attracts payment of compensation to the affected persons.

There is doubt and uncertainty as to whether a person who losses his life as a result of an article falling over him from an aircraft can enjoy the same quantum of damages of One Hundred Thousand Special Drawing Right (SDRS) as it is payable to a passenger whose life is lost in the same aircraft accident. This question is palpable owing to the fact that no amount of compensation payable to loss of life of ground victim is categorically stated in the Act.

Ordinary or literal meaning of Section 49 (2) reveals that a court of law would have to wage in to determine whether in actual fact the life is lost, whether such lost of life occurred as a result of an article which felt from the aircraft, who is liable and what quantum of compensation payable to the person whose life was lost.

There is therefore no doubt that a ground victim of an aircraft accident is recognized by law and entitled to be compensated for the loss, injury or damage suffered from the accident. What is not catered for by the law is the quantum of compensation payable to such victim and the yardstick to be considered in determining such quantum.

4.2.3 Crew Member

It is interesting to note that Section 78 of the Act dealing with definitions of terms did not define who a crew member is? Thus, a crew member is a member of a group of people who work together especially in a ship.[22]

21. Charles worth and mercy on Negligence (1983) London & Mazwell, eleventh edition pp 17 – 18.

22. Bryan A. Garner Blacks Law Dictionary 9th Edition, p209. See also Section 78 of the Civil Aviation Act 2006.

The Chicago Convention 1944 which is the *locus classicus* in the field of civil aviation and set the tone and frame work for the economic, safety and security regulation of international civil aviation, made provision for who are the crew members in an aircraft. Annex I which contains standards and recommended practices for the licensing of flight and ground crew necessary for the safe operation of an

aircraft. These personnel accordingly include Pilots, Flight / Airworthiness Engineers, Air traffic controller, flight dispatchers and maintenance technicians. This simply implies that crew members, are members of staff working jointly and severally in an aircraft for the purpose of its operations and safety system. These classes of people are statutory or contractual staff of the company which owns or operating the aircraft. As a consequence therefore, they have an employment contract regulated by a particular terms and conditions, enforceable against their employers.

It is equally important to examine Section 48 of the Act to see what the provision of Article 17 (1) of the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague convention) 1970 is. The Articles provides that a carrier is liable for damage sustained in case of death or bodily injury of a passenger on the condition 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 the aircraft. This provision and the general definition of a passenger being a traveler on a public or private conveyance other than the driver, bring the crew members within the confine of passengers who are entitled to be compensated by the carrier in consonance with the provisions of Section 48 & 49 of the Act.

Consequently, crew members whether staff of the carrier or any airline operator have the status of passengers for the purpose of being compensated for loss, or injuries sustained as a result of an aircraft accident.

4.3 Assessment of the Quantum of Compensation

Claims for compensation are usually settled through three main ways i.e. by way of negotiation, by arbitration and by litigation. In any of the three instances, the quantum of compensation is determined by an assessment of the affected person or property with the view to arrive at what is reasonably justifiable as a basis for discussions and subsequent agreement on what is payable as compensation.[23]

After assessment, the next stage is the coming together of the parties or their representatives with a view to reaching a compromise. Negotiating compensation may be long drawn where Victims are large in numbers and became difficult to speak in one voice.

Negotiation also breaks down where the victims claim or demand is unreasonable or outrageous, or where the *tortfeasors* offer an unreasonable and unacceptable quantum of compensation.[24] It is a common practice that where no offer of compensation is made, Victims or their relations take the initiative and ask for compensation using the services of legal practitioners.

The processes of negotiating for compensation usually lead to arbitration on whether compensation is payable and the quantum of such payment. It is the failure of negotiation which usually leads to litigation.

Litigation therefore is the aftermath of the breakdown of negotiation and arbitration. It is considered expensive and technical as the court would have to put several factors in to consideration to determine whether or not a person or a victim is entitled to compensation and which scale to apply in arriving at what is reasonable and justifiably payable.

4.3.1 Dead Victim

A dead victim is no more a legal entity that can sue and be sued. His estate however can step in on its behalf for the purpose of being compensated. Thus, a dead victim in an aircraft accident has a strict, definite and minimum quantum of compensation in his favour provided for him to the benefit of his Estate in accordance with Sections 48 (1) (2) and (3) of the Civil Aviation Act 2006 and Article 17 of the 1st Schedule to the Act.

This compensation is strict as the liability which engendered the compensation is equally strict. Consequently, a dead victim or his relation is entitled to the sum of N100,000 Special Drawing Rights and the carrier according to Article 21(1) of the first schedule to the Civil Aviation Act 2006 cannot exclude itself from the liability. However, the carrier shall not be liable for damages arising from an accident resulting in the death of a passenger if such passenger claims beyond the N100,000 Special Drawing Rights and the carrier can prove that such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents, or such damage was solely due to the negligence or other wrongful act or omission of a third party.[25]

23. Adewale O. (1999) *Oil Spill Compensation Claims in Nigeria Principles, Guide lines and Criteria*, Journal of African Law, Vol. 33, No. 1, at pg1 – 92.

The implication of Article 21 (2) (a-b) of the 1st schedule to the Act therefore is that a carrier who lost his life in an aircraft accident can successfully claim beyond the 100,000 Special Drawing Rights (SDR^S) if he is able to prove that the accident which claimed his life occurred as a result of a negligent act, an omission or a wrongful act of the carrier or any of its agents. The proof herein is a proof on the preponderance of evidence as it is applicable in every civil case before a court of law and in consonance with Section 137 of the Evidence Act 2011.[26]

4.3.2 Fatal Injury and Non-Fatal Injury

Fatal injury means any injury that result in death within thirty (30) days of the accident. It is an occurrence associated with the operation of an aircraft where, as a result of the operation of an aircraft, any person (either inside or outside the aircraft) receives fatal or serious injury or any aircraft receives substantial damage.[27] It is a serous bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.[28]

It is equally an injury for which a person is detained in hospital as an in-patient, injury or any of the following injuries whether or not they are detained in hospital; fractures, concussion, internal injuries, crushing, burns (excluding friction burns), severe cuts, severe general shock requiring medical treatment and injuries causing death 30 days or more days after the accident. An injury is non-fatal when the injury sustained is not too serious as to cause a permanent deformity on the victim.

25. See article 21(2) (a&b), Hague convention 1970 1st Schedule to the Civil Aviation Act 2006.

26. Evidence Act Cap E.14, Laws of the Federation LFN 2011.

27. Definition of Key terms used by Air Safe. Com. www.Airsafe.com. Levent/define.htm.. accessed on the 30-11-14.

Assessment of compensation payable to victim of both fatal and non-fatal injuries is always done by a way of negotiation between the victim and air carrier that caused the accident which resulted in to the injury. Quantum of such assessment can also be arrived at through Arbitration wherein both parties are ably represented. Litigation is resulted in to when both the negotiations and arbitration failed.

It is pertinent to note that injuries are not classified in to fatal or non-fatal by the Civil Aviation Act. What is known to the Act is that there is an injury sustained from an accident which occurred on board the aircraft. It is therefore the duty of the plaintiff victim to ascertain that the injury sustained by him is a fatal or non-fatal injury and to lead credible evidence to sway the mind of the court to so believe in order to justify his monetary claims commensurate with the injuries.

An injury, whether fatal or non fatal, once proved to be sustained by a person, such a person is entitled to be compensated. The classification only becomes of importance when a court of law is to determine the quantum of compensation to be awarded in a particular case[29].

It is in general, that pecumary compensation which the law awards to a person for the injury he has sustained by reason of the act or default of another whether that

act or default is a breach of contract or tort[30]. Where the claim of the plaintiff is premised on damages, it is the duty of the court to assess damages even if the decision of that court goes against the plaintiff. However, where the trial court fails to assess the damages, any appellate court in its general powers conferred by its enabling laws which created such court, is in a position to assess the damages[31].

In the case of *R. O. Iyere vs. Bendel Feed & Flour Ltd*[32], the Plaintiff, while working for the defendant company's feed and flour mill at Ewu, had his right upper hand caught in the defendant's running machine in a circumstances entitling the Plaintiff to call in aid the maxim of *res ipsa locuitur* in establishing the claim of negligence against the defendant.

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29. See the case of Shell Petroleum Development Company (Nig.) Ltd VS. Teibo & Ors (1996) 4, NWLR, (part 445), p657 at p680.

30. Umuje & 1 Or Vs. Shell Petroleum Development Company of Nig. (1975) 9 – 11, SC, p155 at 162.

31. Soleh Boneh Overseas Ltd Vs. Ayodele (1989) 1, NWLR, (pt99), p559 at 694.

The Supreme Court in assessing the quantum of damages accruable to the plaintiff was of the opinion that the loss of the upper right hand of the plaintiff indeed renders him to become a disabled person, which no amount of compensation will restore him back to normalcy. Accordingly, there is in law, no specific and fixed quantum of evidence that must be adduced in support as the evidence of physical disability arising from the damage is a sufficient proof[33].

The implication of this decision on the victim of an aircraft accident is that, once he can establish that the bodily injury, whether fatal or non-fatal was sustained as a result of boarding an aircraft or in the course of embarking or disembarking the aircraft, the application of the maxim of *res ipsa locuitor* shall avail him and entitles him to be compensated accordingly.

It is trite that a person injured by another person wrongful act is entitled to general damages for non-pecuniary loss such as pain, suffering and loss of amenity and enjoyment of life. Further in the assessment of damages, one classification distinguishes pecuniary loss from non-pecuniary loss. Another classification is between special damages and general damages. Special damages, according to Salmond[34], can be defined as those pecuniary loss actually suffered up to the date of the trial i.e. loss of earnings. General damages on the other hand are those other heads of loss i.e. pain and suffering. The requirement of the law is that where the damage is based on special damages, it must be pleaded arithmetically and must be proved accordingly[35].

On the head of pecuniary loss, the principle of law which relates to it is that of "Restitution in integrum" – so far as actual or prospective pecuniary loss is concern, the amount of compensation can be assessed with a degree of accuracy which will go towards putting the injured person in the same position as he would have been had he not sustained the wrong. On the principle relating to non – pecuniary loss, it is that of fair and reasonable compensation.

Money certainly cannot renew a shattered human frame. However, monetary compensation can be awarded so that the court must do the best it can in the light of the

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33. See United Bank Ltd Vs. Achoro (1990) 6, NWLR, (pt156), p254 at 282 – 283.

34. Salmond on Torts, 16th Ed, Sweet & Maxwell, London, Chap23, p575 at 585.

circumstance of each case as the object of the award of damages is to compensate the plaintiff fairly and adequately but not necessarily punishing the defendant[36].

It is the law that general damages if awarded for the pairs and suffering plaintiff has undergone in the past and is likely to undergo in future. This may include a substantial sum for the mental agony due to the fact that his life has been shortened.

Court may also award substantial damages for loss of amenity or loss of faculty[37]. However, all these damages can only be fair and adequate compensation as no sum could be perfect compensation for a grave injury. Thus, everything must depend upon circumstances of the particular victim (plaintiff). For instance, a young and active man who has been blinded or crippled might recover substantial damages under this head as the "joy of life" will have gone from him as he cannot ride a bicycle, cannot kick a foot ball.

The aforementioned principles of law, according to Ibrahim Tanko Mohammed J.S.C in his lead judgment in the case of *Iyere vs. B.F. & FM Ltd* at p140 influenced by the opinion of field, J in addressing the jury on what to consider in respect of a victim in the case of *Philops vs. London* and *South Western Railway*[38], where he said:-

> *There is another matter, which has been discussed a good deal, and it is one of consideration difficulty, VIZ: how far you are to take account the plaintiff's position. In the case of a poor man, who lost his leg or arm, by which he earned his living you would probably in considering what sum you would give his take into account that he was deprived of the power of earning a livelihood. On the other hand, my Brother Ballantine asks you to take into account that the plaintiff and his wife are in receipt of an income of something like N3,500 a year, so that he will be above all wants, and will be able to live comfortably and with all the reasonable enjoyment of life. Must confess for myself, I have very great difficulty in seeing how you can say that because a person who is injured is very well off, therefore, a person who injures him is not to pay reasonable or proper compensation. The damages to which a man is entitled are the consequences of a wrongful act by which he suffers. The consequences of a wrongful act here are undoubtedly that Dr. Philips has been likely to carn if this accident had not happened. That has been taken from him, and I am at a loss to see how the fact that he enjoys considerable income from other sources can alter the amount which you ought to give him.*

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36. MC Gregor, (1965) "Compensation Punishment in Damages Awards" 28 MLR, p629

37. Andrew Vs. Free borough. (1967) 1 Q.B, p1.

Consequently, the expression "loss of amenities of life" which is exemplified in the physical disability of the victim is hardly quantifiable in terms of money. This is generally because, apart from the fact that every person is entitled to enjoy the amenities of life, the natural and ordinary activity and age of the plaintiff, may determine the nature of the deprivation suffered by the physical injury. The value depends on the assessment of the trial judge based on the evidence, guided by awards made in respect of earlier similar disabilities[39].

Thus, in personal injury cases, once there is evidence of injury, pains and / or permanent incapacitation, the victim or plaintiff is entitled to be awarded reasonable amount as general damages. Such an award should be based on some circumstances since the injury cannot be quantified in monetary terms. In making such award therefore, the court could be swayed in considering the following factors:

a. The Bodily pain, that is, whether the pains will be permanent so that the plaintiff will be with for life.

b. Status of the injured person, his occupation, profession or calling.

c. Whether the injury is permanent or transient.

d. Loss of earnings caused by the disability.

e. Length of time spent in receiving treatment before the wound healed.

f. Loss of amenities of life.

g. Age and expectations of life[40].

In awarding damages of this nature, the court is to simply be guided by the opinion and judgment of a reasonable man, as the general damages are losses which flow naturally from the defendant's acts and its quantum therefore needs no strict or arithmetic proof because, it is naturally presumed by law.[41]

4.3.3 Loss of Properties

The purpose of an award of damages is to compensate the plaintiff (Victim) for the sustained damage, injury or loss so suffered. Accordingly, where a court of law is called upon to assess that a party which has been indemnified by the act which is in issue must be in the position in which he would have been if he had not suffered the damage for which is in issue must be out in the position he is being compensated.[42]

39. *Martin Usong vs. Hanseatic International Ltd*. (2009) 5 MJSC, (pt 11), p40 at 46.

40. *Garba vs. Kur* (2003) 11, NWLR, (pt.831) p280.1 *Eseigbe vs. Agbolo* (1993) 9, NWLR, pt.3156, p128 quoted in, Basil Momodu, Court-Room Rapid Reference Hand Book, 2014, Evergreen Overseas publications Lomited, Benin City, Nigeria, at p129 – 130.

When a property is damaged or destroyed, the question of assessment of damages as regards what should be the proper value on which to base the cost of replacement of a destroyed piece of property on the one hand, and the repair of the damaged on the other hand are issues to be determined by the court.[43]

Thus, where there is a claim for total destruction of property the measure of damage will be the value of the property at the time of the destruction subject to the principle of restoring the plaintiff as far as it is possible to put him in the position he was before the injury. Computation of damages is not however uniform, it varies between total loss calling for replacement of a damaged property and repairs of the damaged property. While replacement is static, repairs are subject to varies of unpredictable market forces. Cost of repairs not to be unjust to the one who suffered legal injury cannot be confined to the time when the damage occurred. For this reason, assessment of damage must take into consideration the current market situation as the court must take in to account the economic strength or decline of the Naira, and its purchasing power.[44]

4.3.4 Psychological or Emotional Distress

English Law and Common understanding have moved some distance since recognition was given to this symptom as a basis for liability. Whatever is known about the mind-body relationship is now accepted by medical science that recognizable and severe physical damage to the human body and system may be caused by the impact, through the senses, of external events on the mind.[45]

It is a general term that is used to describe unpleasant feelings or emotions, that impact ones level of functioning. It is psychological discomfort that interferes with daily activities which is capable of resulting into negative views of the environment, anxiety, distractions and symptoms of mental illness.

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42. *Anambra State Environmental Sanitation Authority & 1 Or vs. Raymond Ekwenem.* (2009) 7 MJSC, (part 1) p122 at p142

43. Shell petroleum Development Company Ltd vs. Ambah (1990) 2 MJSC, pg. 152 at p164

A psychological distress can be caused by traumatic experiences, such as the death of a loved one; it can also be seen as a maladaptive response to a stressful situation which usually occurs when external events or stressors place demands upon a person that the person is unable to cope with.

Once a person is engulfed in a psychological trauma, the following symptoms are likely to be jointly or severally inherent in the person.

a. Weight gain

b. Anger Management Problem

c. Obsessive thought or compulsions

d. Physical symptoms not explained by a medical condition.

e. Decreased pleasure in sexual

f. Hallucinations

g. Delusion.

h. Reckless acts i.e excessive shopping sprees.

i. Belief that others can hear your thought.

j. Strange or unusual behaviours i.e wearing your clothing backwards.[46]

Consequently, just as mental illness can influence all aspects of somebody's life, psychological distress can interfere with some one's work performance.

There may thus be produced what is identifiable an illness as any that may be caused by not direct physical impact, but that was felt through the senses, of external events of the mind. This situation is akin and similar to a situation where the plaintiff is merely startled or frightened and, in that sense "Shocked" momentarily and thereby reacts in such a way that he does something which results in his sustaining injury.[47]

Because "nervous shock", in its very nature, is capable of affecting so wide range of people, there remains a real need for the law to place some limitation upon the extent of admissible claim. Consequently, three elements are inherently identifiable in respect of the claim, namely:

46. D.A Glass & C Chastimore, (1989), *Introduction to the Law of Carriage of Goods*, Sweet & Maxwell, London, p420.

47. *Slatter vs. British Railway Board* (1966), K.I.R, P336, where a shunter, who knew that the plaintiff was examining a line of wagons in the shunting yards failed to prevent some wagons striking one end of the line with such unnecessary force that the impact produced an exceptionally load bang. This caught the plaintiff so by surprise and startled him that he jumped, stripped and fell, injured himself. The defendants

a. The class of persons, whose claims ought to be recognized;

b. The proximity of such persons to the accident;

c. The means, by which the "nervous shock" was caused.[48]

As regards the class of persons, the possible range of people lies between the ordinary bystander and the closest of family ties that is either parent and child or husband and wife. The claims of the latter are recognized by the existing law. On the other hand, the former is not so recognized, because either such a person must be assumed to be possessed of fortitude, which is sufficient to enable him to withstand the calamities of or modern life. Those cases which involve less close relationships, will require very careful scrutiny but the closer the tie, in scare and not just in relationship, the greater the claim for compensation.

As regards proximity to the accident, obviously this must be close in both time and space, because, for the plaintiff's claim to succeed, a causal connection between the shock resulting in to psychological distress and the defendant's negligence has to be proved.

Considering the afore stated definitions, and the surrounding indices of the psychological distress earlier discussed, coupled with the operative words of Sections 48 and 49 of the Civil Aviation Act 2006, (which is "injury"), one can infer that psychological or emotional distress can conveniently be classified as a form of injury, though not physical abinitio but capable of leading to internally body discomforts and in some instances leading to physical discomfort which is transformable in to physical injury.

4.4 Prompt Payment of Compensation

The provision of section 48(2) of the 2006 Act is categorical on the advance payment of Thirty Thousand United State Dollars payable to the natural person or such natural persons who are entitled to claim compensation in order to meet immediate economic needs of such persons. It is not in dispute that the advance payment of £30,000 payable within a month from the date of the accident is not paid in most cases

within the time frame as same is paid six months and one year of the accident. For example, victims of the associated Airline whose chartered aircraft (carrying the corpse

48. Ibid at p.990

of the late Governor of Ondo State Olusegun Agagu) crashed on the 3rd October 2013 were only paid the deposit of £30,000 sometime in May 2014[49].

It is a matter of concern that the bulk sum of compensation to the family of the deceased victims of aircraft accident is traditionally not paid within a reasonable time frame. It is mostly paid years after the accident at the convenience of the carrier and the Insurance Company. It is on record that as at 27th May 2015, families of victims of the 2012 Dana Airline Plane crash have not been paid their full compensation as the families thereof on the 27th May 2015 celebrated the 3rd years Anniversary of the incident wherein the chairman of the affected families Mr. Paul Utulehie briefed the news men in Lagos[50].

In the same vein, victims of the Allied Air Cargo Plane which skiddled off the runway at the Kotoka International Airport (KIA) in a raining whether and crashed in to a minibus traveling on the El-wak Stadium in Accra, were not paid even the deposit of £30,000 as at June 2014 a year after the incident[51].

49. M. modernghana.com/compensation, accessed on the 30th June, 2015

50. Nannewsnigeri.com.accessed on the 30th June 2015

CHAPTER FIVE

CONCLUSION, FUNDINGS AND RECOMMENDATIONS

5.1 Conclusion

In the forgoing, this research work argued the inefficiencies or inadequacies in the liabilities of the carriers for the purpose of redressing and compensating the victims of aircraft accident in Nigeria.

It is no doubt that the provision of section 48 (3) of the civil Aviation Act 2006, as Article 17 of the Warsaw Convention 1929 and Article 20 of the Montreal convention 1999 recognized in effect only passengers as victim of aircraft accident wherein a person can be a passenger for the purpose of been compensated if he meets the three basic requirement i.e.

a. The passenger must have been wounded or suffered bodily injury

b. The injury must have arisen from an accident.

c. The accident must have occurred on board the aircraft or during the course of embarking or disembarking[1].

It is therefore argued that the category of victims recognized by the Act is restricted to the passengers. However from the literal and classical definitions of victims earlier discussed, it is patent that victims of an aircraft accident includes any person harmed killed or sus-teared injury from the accident[2]. The victims therefore can be classified as follows:

1. Passenger victims: which include the bead or injured passengers.

2. Ground victims: which can be divided as follows:

    a. The Dead

    b. The injured; whose injuries can be classified as follows:

        i) Major or fatal injury i.e. an injury which result in death within 30 days of the accident.

        ii) Minor or non-fatal injury.

    c. Those who lost their properties, movable or immovable.

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1. Ososanya, B, "Corporate Aviation Liability-No Hiding Place." (2002) Vol. (4) The Annual Aviation Law and Business Digest, p.44

2 The Civil Aviation Regulations, 2009 p. B237. This is a definition provided by the regulations as it relates to

    d. Those who are commercially affected i.e. those whose lost their businesses or part of it.

    e. Those who are psychologically affected or traumatized[3].

It is also observed that by the provisions of the Civil Aviation Act 2006 and by practice compensation is usually paid on commercial aircraft wherein the liabilities usually fall against the carrier in favour of the passenger victims. However, there are classes of general damages known to the Nigerian …. are not even contemplated in the lump sided compensation regime provided by the Act.

Types of general damages includes:

1. Loss of earning
2. Loss of amenities of life
3. Pain and Suffering
4. Conscious paid and suffering before death.
5. Loss of parental care and support.
6. Nervous shock
7. Medical and funeral expenses.[4]

It is not in dispute from the existing legal frame work that the above classes of damages are not contemplated and therefore makes the compensation regime inadequate and uncomprehensive.

By virtue of section 29 of the Civil Aviation Act 2006, Accident Investigation Bureau (AIB) is the only recognized body that can conduct investigation involving aircraft accidents. This is an unhealthy monopoly which is prone to abuse of the important roles of the Bureau most especially that the lives and properties of victims are involved. This monopoly must be broken to give room for democratic competitions in terms of the accident investigation.

In the same vein, there is no[5] time limit for the submission of the accident reports by the Accident Investigation Bureau (AIB). This places the victims at a legal

3. Aliyu Mustapha: Compensation for Victims of Aircraft Accident under the Nigerian Law; A cal for a paradigm shift, Bayero University Journal of Public Law (BUJPL) Vol. 3, No. 1, June 2011, p.80

4. Uwa E., Compensation for Air Crash Victims. Streamsowers & Co. (2002) p at p.l19

5. See Section 29of the Civil Aviation Act, 2009. The section provides among others that the Bureau will have the sole objective of the investigation of an accident or serious incident under this Act shall be the

disadvantage for most accident investigation reports are not ready for submission within the statutory time limit of two years when the victims can institute actions.

Exoneration of the State Aircrafts from the authority of the Civil Aviation Authority with respect to issuance of license, permit and other authorization is considered a lapse in the administration of the Civil Aviation with respect to the legal rights of the passengers and other victims of aircraft accident involving aircraft used for Military, Customs, and Police Services[6]. The implications therefore is that state aircrafts are completely free from liability for damage caused by them to craft has been recorded to have paid any type of compensation to victims of their accidents.

The silence of the Act on the liability of private aircrafts is equally worrisome. Fling in a private aircraft just like commercial aircrafts necessarily entails the risk of bodily injury, death and property damage arising fro pilot errors or other operational errors, for instance, in October 2012, governor Danbaba Suntai of Taraba State flying in Cessna 208 crashed somewhere close to NNPC Deport in Yola where the Governor and other five passengers were seriously injured and the economic crops on the farm land at the site of the crash were damaged[7].

It is not yet settled who compensate the victims of the private aircrafts is it the Government or the private present compensation regimes do not envisage the existence of the private jet nor contemplate the liability that can stem out of same.

This position can be buttressed by the statement credited to a former minister of Aviation where he stated:

> *As of today, we have about a hundred of private Jet and having them, we have no Law, no policy, and no regulation to make sure that they are operating the way they should operate within ICAO (International Civil Aviation Organization) laws and our aviation policy*[8]*.*

On a general note however, the general law of tort provides that if a person is negligent and that negligence causes injuries, individual has the personal liability.

6. See also Section 32(2) of the Civil Aviation Act, 2006

7. Igid T, and Agabi C, Governor Suntai injured in Plane crash. Daily Trust, vol. 30 No. 70 (Abuja 26th October, 2012) p.1

8. Usman T, Nigeria has no Law guiding Private Jets-Aviation Minister. Available at http://www.premiumtimesng.com /news/135673-nigeria-has-no-law-guiding-private-jets-aviation-minister.html. Assessed on 02/07/2014. It is also revealed that at the last count, the number of private jets operating in Nigeria was 139. They include 87 registered overseas and 52 aircraft registered in Nigeria. It

Thus, if an Individual owner of an aircraft or a private Jet has control of his aircraft and negligently maintains or operates the aircraft in such a manner as to cause injury to another, the owner may be held liable[9].

The relevant provisions of the Nigeria Civil / Aviation Act 2006 created legal compensatory regime which principally created liabilities between the carriers and the passengers hence this presentation analyzing the legal regimes pointing out areas of challenges which created vacuum in the system.

5.2 Findings

Consequently the following findings are made.

1. Article 17 of the Montreal Convention is inconclusive as to what is the meaning of embarking and disembarking. The provision left the court to interprete at what time a passenger can be said to embark or disembark an aircraft. This lead

to different interpretation of the Article by different court in various circumstances.

2. Article 21 of the Montreal Convention make the liability of a carrier strict to the tune of 100,000 United State Dollars for each passenger, while the carriers shall be exonerated from such liability if the carrier can prove or establish that such damage was not due to its negligence or that of its agent or when such damage was caused by contributory negligence or omission of a 3rd party.

3. The Montreal Convention 199 represent the legislative bedrock upon which Civil Aviation Act 2006 was enacted.

4. The Liability of the Civil Aviation Authority for any alleged neglect or defame in the execution of any public duty in the course of discharging any of its duties under Section 24(1) & (2) of the Civil Aviation Act 2006 is not sufficiently clear to ground liability against the authority considering the strict liability regime created only against the carriers under section 48 (1, 2 & 3) of the same Act which in reference to the Montreal convention 1999 codified as third scheduled to the Act restricted the liability to victims of the Aircraft accidents or their relations only to the carriers without a mention of the Civil / Aviation Authority.

9. Kolcyznski P.J, can aircraft owner avoid personal liability for air crashes? Available at http://www.avweb.com/news/av law/181898-1.html/redjrected=1. Accessed on 02/07/2014

5. Liability to non-passenger victims on ground:- The provision of Section 49(2) of the Act is not protective to the non-passenger victims whose life or property are lost to an aircraft accident. The provision, though identify their cause of action, but left the quantum of their claim to be decided either to the mercy of the carriers or by a court of law.

6. Gratuitous passengers / state Aircraft:- It is not certain whether a carrier is liable to a gratuitous passenger who sustains injuries or lost his life in an aircraft accident, considering the fact that there is no privity of contract between them. Although a gratuitous passenger is equally a passenger within the confine of the

provision of Section 48 of the 2006 act there is no contractual relationship between him and the carrier to ground a liability.

7. Similarly, passengers in a state civil Aircraft, though are passengers within the ambit of Section 49 of the Act, they are not paid passengers to suggest a contract of carriage between them and their carrier. Although passengers in a state aircraft, who are on official duty at the instance of their employers are entitled to other benefits relating to their death or injuries so sustained in the course of their official duties, it is not clear whether this relationship can entitled them to be compensated by the carrier which is the same state / employers that will pay them other entitlements.

8. Section 29 (14) of the Act rendered the report of the air accident investigation in admissible in evidence as to form the basis of liability in any criminal or civil proceedings. This provision incapacitates civil proceedings by individual passengers who sustained injuries or families of those passengers who lost their lives in an aircrash, who may opt to pursue civil suits against the carrier. The report is a fundamental document to establish act of negligence and willful misconduct against either the carriers or the Civil Aviation authority. In the same vein, sections 85, 86, 102 & 104 of the Evidence of Act 2011 rendered admissible the report which section 29 (14) of the Civil Aviation Act 2006 rendered in admissible. This represents a patent conflict of the two laws passed by the National Assembly.

9. Liability of the statutory agencies to the passenger in the civil aviation operation should be made expressly clearer in the Civil Aviation Act in the same way it is done in respect of the carriers.

10. Section 49(2) of the Civil Aviation Act 2006 on the non-passenger victims on ground should be redirected to be more protective and clearly actionable against the carriers and statutory agencies.

11. Legal status of gratuitous passenger should be defined along with the liability of the carriers towards them.

12. Provision of Section 29 (14) of the Act on the admissibility of A.I.B report to be amended in order to give probative value to the AIB reports. Two basic compensation regimes were created in the 2006 Civil Aviation Act, namely, the strict liability for families of the deceased victims and higher compensation regime where a family is desirous to press for a higher damages.

5.3 Recommendations

In view of the above findings, the following recommendations are made:-

1. The provision of Article 17 of the Montreal convention require amendment to widen the scope of the provision with a view to close the legislative gaps created therein, particularly with regards the scope of the tem embarking and disembarking.

2. Provisions of Article 19 on the delay, Article 20 & 21 on the limit of liability f the carrier also require further amendment in contemplation of the current challenges posed by the provisions.

3. It is recommended that Montreal Convention 1999 should contain provisions allowing signatory States to amend their local legislations in without awaiting such amendment o the comentione.

4. The aforementioned regimes of compensation are therefore inadequate in the sense that there is no quantum of compensation provided for ground victims and non was provided for the properties lost to the aircraft accident on the

ground. Even with respect to the passengers who sustained injuries in the course of the accident, no specific quantum of compensation was provided by the 2006 Act and the scheduled Conventions.

5. Section 48 (1-3) of the Civil Aviation Act and Articles 17 & 21 of the 2nd schedule to the Act are not comprehensive as a platform for compensation of passenger victims of aircraft accident in Nigeria.

6. Section 49 of the Civil Aviation Act 2006 is also short of protecting the interest of ground victims and their properties lost to an aircraft accident.

7. The intendment of the Civil Aviation Act and other relevant Laws in allowing the victims of aircraft accident to claim damages for injuries sustained is defeated by Section 29 (16) of the Act which rendered the probative value of the Accident Investigation Report valueless for purpose of any legal proceedings.

8. Section 48 (1-3) of the Act should be enlarged to accommodate minimum quantum of compensation for passengers who sustained injuries as a result of aircraft accident as it is provided for the case of deceased victims.

9. Section 49 of the 2006 Civil Aviation Act should be amended to provide for a minimum compensation regime for deceased ground victims and the properties on the ground.

10. Probative Value of the Accident Investigation Report must be restored by amending Section 29 (16) of the Civil Aviation Act to that effect. This is required to enable victims to approach courts of law with a high hope in relation to compensation on aircraft accident.

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CHAPTER TWO

2.1 Introduction

This Chapter titled the Historical Development of the Aviation law in Nigeria aimed at defining the key terms generally used in Civil Aviation and particularly those employed in this research. It also examined the hisotircal antecedent of the Civil Aviation Law in the Global World of Aviation in general and in Nigeria in particular.

The domestication of the international air law instruments in Nigeria in accordance with section 4 of the 1999 constitution as well as the implementation of the international air service agreement were examined hereunder.

2.2 Conceptual Clarification of Some Key Terms

The following key terms are necessarily important and called for clarification in this work i.e. analysis, liability regimes, aircraft accident.

The word analysis, literally means detailed examination of the elements or structure of something, typically as a basis for discussion or interpretation. It is also synonymous to examination, investigation, inspection, survey, study and scrutiny.[1]

It is also the process of breaking down a something in to its parts to learn what they do and how they relate to one another. It's a separating or breaking up of any whole into its parts, especially with an examination of these parts to find out their nature, proportion, function, interrelationship etc, it is a separation of an intellectual or material whole into its constituent parts for individual study for the purpose of relating the components to making up a whole.[2]

Liability represents a claim against the assets, or legal obligations of a person or organization, arising out of past or current transactions or actions. It requires mandatory transfer of assets or provision of services, at specified dates or in a determinable future. Legally, liability means responsibility for the consequences of one's acts or omissions, enforceable by civil remedy (damages) or criminal punishment.

Aircraft accident represent an occurrence which is associated with the operation of an aircraft which takes place between the time any person boards the air craft with the intention of flight until such time as all such person disembarked in which:

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1. www.thefreedictionary.com/analysis accessed on the 30-01-2015

2. www.merriam-webster.com/dictionary/analysis accessed on the 31-01-2015

a. A person is fatally or seriously injured as a result of being in the aircraft or in direct contact with any part of the aircraft or in direct exposure to jet blast.

b. The aircraft sustains damage or structural failure which adversely affects the structural strength and would normally require major repair or replacement of the affected component.[3]

The major characteristic of civil aviation is its international nature. Just as the aircraft which is at the core of civil aviation activities moves at a very high speed and in three dimensions, that enables an aircraft to enroute to a particular destination to pass through the airspace of several countries, each having its own national laws and customs: so also is the specter of law relating to civil aviation as it cannot be considered in isolation from developments in other jurisdictions.

This Chapter aims at tracing the historical antecedents of aviation law from the year 1783 when the first aircraft ever used for aerial transport, including carriage of mails was constructed by the Montgolfier brothers (Joseph and Etienne). The history of air law in Nigeria shall equally be traced from 1925 when the first flight in to Nigeria was recorded before the commercial flights started in 1935.

In the same vein, importance, roles and establishment of regulatory aviation agencies shall be stressed such as the International Civil Aviation Organization (ICAO) International Air Transport Association (IATA), Ministry of Aviation etc.

2.2 Historical Development of Aviation Law

The words "Air Law", "Aeronautical Law", "Air Transport Law" and or "Civil Aviation Law" refer to the same thing in the legal parlance. Thus, "Air Law" can be described as a body of rules governing the use of airspace and its benefits for aviation, the general public and the nation of the world.[4]

The International Civil Aviation is governed by International Conventions hence was defined by the International Civil Aviation Organization (ICAO)[5] as "a body of principles and rules of public, private, national or international Law which govern the legal relation arising from the civilian use of Air transport activities". According to

3. www.businessdictionary.com/definitor accessed on the 2nd – 02 – 2015.

4. David a Glass & C Cashmore, Introduction to the Law of Carriage of goods (1989), Sweet Maxwell, London, p 205

5. In international and specialized agency of the United Nations under the Article 7 of the UN charter and

Shaw Cross and Beaumont[6], Air Law can be defined as a combination of public and private international Law, whose purpose is to provide a system of international regulation of international civil aviation and to eliminate conflicts or inconsistencies in municipal Air Laws.

The study of law relating to air transport is important as there is need to ascertain the standard, terms and conditions under which mails, passengers and cargo are transported. The law therefore intervenes to set the standards and rules and enforceability to be accepted internationally hence the standard and recommended practices. The law equally sets parameters for air carrier operations, their liability for damages arising from their operations and compliance with laws rules and regulations.

According to Malcolm N. Shaw on International Law[7], there are a variety of theories prior to the World War I with regards to status of airspace above states and territorial waters. One view was that airspace was entirely free, another view that there was, upon an analogy with the territorial sea, a band of "territorial air" appertaining to the state followed by a higher free zone.

A third approach was that all the airspace above a state was entirely within its sovereignty, while a forth view modified the third approach by positing a right of innocent passage through the air space for Foreign Civil Aircraft.[8] There was a particular conflict between the French theory of freedom of the air and the British theory of state sovereignty, though both agreed that the airspace above the high seas and terrae nullius was free to all.

The outbreak of the World War with one, its recognition of the security implications of use of the air changed the earlier system. The prevailing approach therefore was based on the extension of state sovereignty upwards into airspace. This was acceptable both from the defense point of view and in the light of evolving state practice regulating flights over national territory. This was reflected in the 1919 Paris Convention for the Regulation of Aerial Navigation which recognized the full

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6. Air law (2000) (4th Ed) vol. 1. London Butter Worth at p1

7. (2005) Cambridge University press USA, 4th Ed, p 463.

Sovereignty of States over air space above their land and territorial sea.[9] Accordingly, the international law rules protecting sovereignty of state apply to the airspace as they do to the land there under. This principle was pronounced upon by the International Court in the case of Nicaragua.[10]

However, sovereignty was understood to extend for an unlimited distance into the airspace, although this has been modified by the new law of outerspace[11]. The present regime concerning Air Navigation developed from the Chicago Conference 1944 and the Conventions were adopted therein. The Chicago Convention on International Civil Aviation, which does not apply to state Aircraft (for example military, customs, and police aircrafts)[12] emphasized the complete and exclusive sovereignty of states over their air space[13], Article six thereof reinforces this by providing that no scheduled International air service may be operated over or into the territory of a contracting state without special authorization of that state.

However, the states parties to the Convention qualified their sovereignty by agreeing in Article five that aircraft of other contracting states:

Not engaged in scheduled international air service, shall have the right to make flights into or entrances non-stop across (their territory) and to make stop for non- traffic purposes without the necessity of obtaining prior permission and subject to the right of the state flown over to require landing[14]

This provision has in practice been viewed as an exception to the general principle enumerated in Article six of the Convention, particularly since states have required that permissions be obtained prior to the acceptance of charter flights over or into their territory, even though such flights do not really come within the meaning of Article six or within the definition of scheduled International air services put forward by the Council of the International Civil Aviation Organization in 1952.[15]

9. Innocent passage to the private aircraft of other parties so long as they complied with the rules made by or under the authority of the convention. Similarly, Articles 5-10 provided that nationality of aircraft would be based upon registration and that registration would take place in the state of which their owners were nationals.

10. ICJ Report, 1986, pp 14, 128: 76 ILR. p1

11. Shaw cross ans Beaumont; Air law (2000) (4th Ed) vol. 1. London Butter worth at p1.

12. (2005) Cambridge University press USA, 4th Ed, p 463.

13. See e.g. Oppen heim's International Law, pp 650-1.

To this end, the Chicago International Air Service Agreement, 1944, dealing with scheduled international air services, specified that contracting states recognized the privilege of such service to fly across their territories without landing and to land for non-traffic purposes. These two freedoms agreement has been termed and regarded as accompanied by a five freedoms agreement upon which the 1944 Chicago International Air Transport Agreement added to the aforementioned provisions extensive privileges of taking on and putting down passengers, mails and cargo in the territories of contracting states.

This Agreement however was not ratified by many states and the U.S.A withdrew from the Agreement in 1946 claiming that too much of commercial values had been granted and traded away by the agreement. This, consequently earned the agreement little importance today in the aviation circle.

The implication of this is that, in actual practice, the regulation of international scheduled services has been achieved by an extensive network of bilateral agreements such as the U.K-U.S.A Bermuda Agreement of 1946[16.] It is pertinent to note further that the Chicago Conference 1944 also led to the creation of International Civil Aviation Organization (ICAO), a United Nation specialized Agency based in Canada, which concentrates upon technical administrative co-operation between states and adoption of agreed safety standards to the encouragement of the expansion of navigation facilities.[17] ICAO's aims and objectives are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport. It has a range of powers from legal to technical and administrative powers and it consists of an assembly, a council and such other bodies as may be necessary.

The Chicago Conference in the main therefore reaffirmed the principles agreed upon in 1919 Convention with regards to the sovereignty of states over its airspace and the need for permission to operate schedule international air services among other issues. Air cabotage, i.e. the right to carry traffic between points within territory of a state can be reserved exclusively to the state, as traffic between metropolitan and colonial area. It must be noted that the Chicago Conference system was to some extent undermined by the growth of bilateral Agreements as the means of regulating International air transport, although many common principles may be discerned in such Agreements as they are modeled upon the Bermuda model.

16. Which was replaced by the Bermuda 11 Agreement of 1977? See Heathrow Airport user Charges Arbitration, 102.1LR, p215.

The Bermuda principles in general made provisions that the air transport facilities available to traveling public should bear a close relationship to the requirements of the public to the extent that there shall be a fair and equal opportunities for the carriers of the two nations to operate on any route between their respective territories. The operations by air carriers of either government of the trunk services described in the Annex of the Agreement and the interest of the carriers of other government shall be taken in to consideration, so as not to unduly affect the services which the latter provides on all or part of the same routes. It should be the understanding of both governments that services provided by a designated air carrier under the Agreement and its Annex shall retain, as their primary objective, the provision of capacity adequate to the traffic demands between the country of which the carrier is a natural and the country of ultimate destination of the traffic. The right to embark or to disembark on such services of international traffic destined for and coming from third countries at a point or points on the routes specified in the annex to the agreement, shall be applied in accordance with the general principles of orderly development to which both governments subscribed and shall be subject to the general principle that capacity should be related;

a. To traffic requirements between the country of origin and the countries of destination;

b. To the requirements of thorough airline operations; and.

c. To traffic requirement of the area through which the airline passes after taking account of local and regional service.

It should be the intention of both governments that there should be regular and frequent consultations between their respective aeronautical authorities and that there should thereby be close collaboration in the observation of the principles and the implementation of the provisions outlined therein and in the Agreement and its

18. M.N. Shaw, International Law (2005), Cambridge University press, USA, 4th Edition, pp 467-468.

Annex[18.] One major feature of Civil Aviation is its international nature and the fact that the

aircraft which represents the bedrock of civil aviation activities moves for a very high speed and in three dimensions that enables an aircraft enroute to a particular destination to pass through the air space of several other countries, each having its own distinct national laws and customs,[19] so also is the specter of law relating to civil aviation. It is therefore an aspect of law that cannot be considered in isolation from the development in other jurisdictions.

From historical perspectives, it is on record that the hot air balloon constructed by the Montgolfier brothers (Joseph and Etienne) represented the first aircraft to be used for aerial transport, including carriage of mails and for military purposes such as reconnaissance and bombing in the year 1783,[20] when a police directive was issued aimed directly and exclusively at the balloons of the Montgolfier brothers. At that time flights were not to take place without prior authorization.

For instance, in America, the first authenticated flight by man in a power driven heavier than – air machine was achieved on 17th December 1903 by the Wright Brothers, at Kitty Hawk, North Carolina. According to Shaw Cross and Beaumont on air law, Professor Lang by had already designed a practical aircraft capable of flight under its own power which was regarded as the embryonic prototype of all modern aeroplanes. In the year 1909, Lawyers came in to aviation industry by establishing and founding International Committee on Aviation Law which formed the basis for the coming into being of a Conference of Aerial Navigation in 1910 by representatives of Nineteen Nations in Paris. At the end of the Conference, they drew up but could not agree upon a Code of International Air Law. Consequently, the British Parliament in 1911 enacted the Aerial Navigation Act of 1911 which was re-enacted (with amendment) in 1920 and repealed by the ultimate Civil Aviation Act of 1949, a statute applicable in Nigeria being a British colony.

In the Nigeria context, the first flight in the Country was recorded in 1925,[21] although commercial aviation did not commence until 1935 when the Imperial Airlines

19 Diederiks- verschoor, i.H (1993) introduction to Air law (5thed.) p4

20. See Shaw cross and Beaumont (issue 82, Dec 2000) Air Law. (4th Ed) Vol. 1. London, Butterworths at 111. Note that two weeks after the first flight on a hot air balloon, Jacques Charlesa French and Nicolas Robert lifted off from Paris in a hydrogen balloon.

21. When a Royal Airforce Officer Stationed in Sudan decided to undertake a long cross country flight from Khartoum to the Northern parts of Nigeria and landed on the race course in Kadu (See Adegbuyega &

started regular flights between Nigeria and the United Kingdom. Immediately after the World War II, the British overseas Corporation (BOC) replaced the Imperial Airlines to provide air transport service to the British West African Colonies. The service was taken over by the West African Airways Corporation (WAAC) in 1946.

This Corporation broke up when Ghana gained independence in 1957 and resolved to form its own independent airline. Consequently, the West African Airline corporation was later renamed Nigeria Airways Limited after the Federal Government of Nigeria bought over the shares of other share holders in the Company. The aviation industry in Nigeria prior to independence had continued to be governed by laws promulgated by the British Parlianment[22] until 1964 when the Civil Aviation Act 1964 was enacted and since then the industry had continued to be administered principally by Nigerian legal institutions and legal instruments.

The history of aviation law is incomplete without the regulatory agencies which include the International Civil Aviation Organization (ICAO), International Air Transport Association (IATA) at the International Level, and the Federal Ministry of Aviation, Nigerian Civil Aviation Authority (NCAA), Federal Airport Authority (FAAN) & Nigerian Airspace Management Agency (NAMA) at the National Level.

2.3 Nation Industry Development

Two industry developments with regards to airlines are worth mentioning. The airline industry has continued to undergo major structural transformation and to adjust to a dynamic market place. The global trends include airline alliances and inter alia/mergers and acquisitions.

One of the strong global trends is the formation of airline alliances: voluntary unions of airlines held together by various commercial cooperative arrangements. The phenomenon has been evolving since 1997, when Star Alliance was created by five major airlines. The expansion of alliances is a consequence of airlines response to, inter alia, perceived regulatory constraints (such as bilateral restrictions on market access, ownership and control), a need to reduce their costs, and economic incentives to restructure into larger networks as markets become more competitive. The three major global alliances are: Star alliance, one world Alliance and Skyteam. As at 2013, the membership of Star Alliance was 31 with membership from several continents. Only three airlines are members from Africa vizz: South African Aireways, Egypt air and Ethiopian Airlines. One world Alliance has a membership of 12 airlines. No African airlines is a member of the alliance. With regards to Skyteam, out of its 19 member airlines, Kenya airways is its only African airline member. Or the three global alliances having a total number of 62 airlines. Africa has only four airlines. No Nigerian airline is on any of the alliances.

22. The Nigeria Independence Act 1960 abolished the colonial Law validity Act 1865 and provided that no Act of UK parliament passed on or after October 1st 1960 shall extend to Nigeria or any part thereof.

Another global trend is that of mergers and acquisition. Airlines in many parts of the world have resorted to mergers, acquisitions or operational integration under a single holding company. The common motive of this trend is the need to remain competitive, to gain access to new markets and achieve cost savings. Up to the early 2000's most mergers or acquisitions were within the same State, nevertheless, the opportunity for cross-border mergers and acquisitions has been increasing as the economy becomes globalized and many States adopted new policies or rules on

foreign investment and control in national airlines, and relaxed the ownership and control conditions in their ASAS. Elsewhere examples of mergers or acquisition abound. In 2004, KLM Royal Dutch Airlines merged with Air France under a new parent company Air France/KLM; in 2013, US Airways and American Airlines merged and amongst others in 2010, Caribbean Airlines acquired Air Jamaica. So far, there is no record of any Nigerian Airline(s) involved in cross-border or domestic mergers or acquisition.

2.4 Domestication of International Air Law Instruments

Aviation, including airports, safety or aircraft and carriage of passengers and goods by air, external affairs, implantation of treaties meteorology, and international trade are all items contained on the Exclusive Legislative List made pursuant to section 4 of the 1999 Constitution vesting exclusive legislative powers to the National assembly on those items. Section 12 of the 1999 constitution provides for the domestication of treaties by the National Assembly before implementation. Consequently, all treaties and laws that have been domesticated by the National Assembly pursuant to section 12 of the Constitution shall have the force of law in Nigeria.

In that regard, the repealed carriage by air (Colonies, Protectorates and Trust Territories) Order 1953 and the carriage by Air (non-International Carriage) (Colonies, Protectorate and Trust Territories) Order of 1953 both made the Warsaw Convention, 1929 applicable to the country. Indeed, the Supreme Court in the case of *Ibidapo vs. Lufthansa Airlines*[23] held that the 1953 Order is still an existing law in Nigeria and by virtue thereof in force and applicable. The court further held that the Warsaw Convention is still applicable to the country by virtue of the two 1953 Orders.

Domestication of certain Conventions relevant to the aviation industry is one of the main thrust and objectives of the Civil Aviation Act, 2006. Multilateral

conventions signed, ratified or acceded to by Nigeria before the Civil Aviation Act, 2006 not domesticated in accordance with section 12 of the Constitution were now domesticated under the Act. For examples, section 57(1) AND Schedule I of the Act, domesticated conventions dealing with safety. The Act also domesticated the Convention on International Interests in Mobile Equipment, 2001 and the Protocol to the Convention on International Interest on Mobile Equipment on Matters Specific to Aircraft Equipment, 2001 (the Cape town Convention and Protocol). The goal of the Cape Town convention and the Protocol specific to aircraft equipment is to facilitate asset based financing and leasing of aircraft, aircraft engines, aircraft objects and helicopters to ensure that interests in such equipment are recognized and protected universally. This would give Nigeria the opportunity to acquire new, modern, safe and efficient aircraft and equipment at reduce transaction cost by about 30%.[24]

The Convention for the Unification of Certain Rules Relating to International Carriage by air, Montreal, 1999 as well as the modifications to the convention for the Unification of Certain Rules were domesticated by the Act.

2.5 Status of Nigeria with Regards to International Air Law Instruments

Nigeria has signed, ratified or acceded to not less than forty eight international air law instruments which include the Chicago convention 1944; the convention on the international Recognition of Rights in aircraft, Geneva, 1948; the Convention for the Unification of certain Rules Relating to International Carriage by air, Warsaw, 1929, the Convention for the unification of Certain Rules for International Carriage by Air, Montreal, 1999; the convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 1963; the convention for the Suppression of Unlawful Seizure of Aircraft, the Hague, 1970, and amongst others the Convention on International Interests in Mobile Equipment, Cape Town, 2001[25].

23. (1994) 4 NWLR Part 498.

24. Gaiya S. M (2006) Features and Benefits of the domesticated conventions in the New Civil Aviation Bill, Paper Presented at the stakeholders workdrop on the New Civil Aviation Act, held at Umdala Hotel

In other words, Nigeria has at multilateral level signed, ratified or acceded to most international air law instruments that guide the conduct of air navigation, international law of carriage, safety and security as well as procurement of mobile equipments. The country also signed relevant instruments at the continental/regional level.

No airport in Nigeria has absolute security fencing. Some of the strategic ones have perimeter fencing but do not have security fencing. What will make security fence is for you to raise it above the level where it is. And it must be six meters away from any obstruction… where you cannot do that you must have a secondary fence. Nigerian airports have failed to meet the expected safety and security requirements in accordance with the Annexes of ICAO as a consequence of which the Nigerian Civil Aviation Authority (the regulatory body in Nigeria and by extension the ICAOs country representative) has refused to certify any of Nigeria's airports because of non meeting the minimum standard for the certification of the ICAO. Nigeria Civil Aviation Authority, (as a member State of ICAO), certifies the airports for the world body if any airport meets the required standard.

The above bleak picture does not mean that there is no silver lining in the horizon, indeed minimal success has been recorded. For example, ICAO's annual safety report for the year 2013, listed Nigeria as one of the 14 African countries that have achieved effective air safety implementation, scoring above the global average of 61%, thus effectively declaring Nigeria's airspace safe. On 18th September, 2010 Nigeria attained the Federal Aviation Administration International Air Safety Assessment category one certification after the audit conducted by the United States Federal Aviation Agency. Nigeria has operated for more than three years as a Cat I Country, and one of the only three in Africa and the only one in the West African Sub-region. The benefits of the Cat I certification includes the fact that due to the enhanced safety rating, insurance premium (which is one of the most significant

25. ICAO, "Status of Nigeria with Regard to International Air Law Instruments" at www.icao.int/..../legal/status%20of%individual%20states/nigeriaen.pdf accessed on 23/7/2014

operating costs of airlines) will be more reasonable; Nigerian registered aircraft began to operate directly into the United States.[26]

2.5 Implementation of Nigeria's Air Services Agreements

Currently, Nigeria has BASAs with over 78 countries but utilizes only 21 of the agreements and reciprocating only about five of them. The agreements entered into by Nigeria are largely lopsided in favour of the foreign airlines whose airlines enjoy many frequencies and multiple entry access into the Nigerian Airspace without corresponding local airlines reciprocating by operating into the foreign countries. The foreign airlines operate many flights into Nigeria and transfer their proceeds to their countries without commensurate revenue being recorded on the part of Nigeria. Thus, Nigeria loses over N120 billion to N350 billion annually to these foreign countries who operate international flights into Nigeria under BASAs.

Nigeria has sold out its BASA without knowing it. It is like selling once inheritance. BASA is supposed to be a treaty that is mutually benefitting between two countries. What we are doing is that we are signing equal rights with an unequal partner. Indeed this assertions can be buttressed by the fact that firstly, for a proper BASA agreement, the contracting partners must reciprocate, otherwise, the non-reciprocating partner in the agreement (in this case Nigeria) will suffer. The main denominator or in the negotiation of BASA's is reciprocity.[27]

Secondly, State hardly grant multiple entry points or designation to foreign airlines but grant single entry point from where the domestic airline feeds the foreign airlines or carries the goods or passengers of the foreign airline within domestic airports. Multiple designations allow foreign airlines to fly more than one destination in a country. Most countries BASAs restrict foreign airlines point of entry in other to develop their local airline giving the domestic carriers the privilege to distribute for the

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26. Eze, C "Waiting for ICAO's Certification of Nigerian Airports", this day Newspaper, Monday 11th August, 2014

27. Ekwere, U "Nigerian Airlines Lose more Ground to Foreign Counterparts", Punch Newspaper, 20th January,

foreign carriers through interline agreements. This in turn increases the capacity of the

local airline. But currently, most of the BASAs signed by Nigeria have given foreign airlines multiple entries into Nigeria and into different cities.[28] So the money that would have been made by local carriers by taking passengers from point of entry to other airports in Nigeria has been given away to foreign airlines. This has reduced the scope and effectiveness of domestic airline operation. While the United Kingdom and Nigeria have 21frequencies on both sides, these 21 frequencies are being operated by British Airways and Virgin Atlantic on the UK side, Arik Air, the only Nigeria carrier currently flying to the UK is only able to reciprocate 14 out of the 21 agreed frequencies. Similarly, on the US route, Delta Airlines and United Airlines are adequately making use of the US Open Skies Agreement with Nigeria. Delta Airlines flies directly from Atlanta to Lagos, while United Airlines flies directly from Houston, Texas to Lagos. On the Nigerian side, Arik Air alone flies to New York, not meeting with as much frequencies as both American carriers combined. Another example is Ethiopia Airlines, one of Africa largest carriers. It flies into Nigeria with entry points at Lagos, Abuja and lately its entrance into Enugu Airport was celebrated in September, 2013 by government[29]. On this note, an aviation analyst indicted the government when he observed as follows:

> *…any government serious about the development of its aviation sector would not celebrate multiple entries for foreign airlines into its territories as doing that sets the tone for the death of local airlines… the wild celebration that greeted ET flight into Enugu demonstrated the lack of capacity on the part of those drawing up policies for the aviation industry… this makes the aviation industry the worst bleeding spot for the country in terms of capital flight.*[30]

If all foreign airlines operating in the country each have only one entry point, they would be forced to either partner with the local operators to help them redistribute the passengers they bring in. In the same vein, air travelers wishing to travel to international destinations would opt to travel by any local carrier or other means of transport to get to the airport of their final departure, thereby encouraging local operators.

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28. Bakrin, F.O "Revisiting BASAs, Promoting Airline Partnership", Aviation & Allied Business Magazine, May-June, 2014 p. 111 also see Jetlife Magazine of 27th February, 2014 "How Nigeria Loses Billions Through Non-Reciprocity of Routes"

29. Kolepsho, F "Managing the Growth of Foreign Airlines in Nigeria" Aviation and Allied Bussiness Magazine, May-June, 2014 p. 12

Thirdly, Nigeria does not have a national carrier nor does it have a dominant or strong flag carrier. Nigeria's only national carrier, Nigeria airways was liquidated in 2004. Since then several domestic carriers have operated to fill the void but have largely been characterized by short life spans even though NCAA posits that Nigeria has "23 active domestic airlines" nonetheless it has been pointed out that Nigeria has only six viable airlines on schedules service. For airlines to survive and prosper, they need "a critical mass of aircraft, air traffic and an optional route network: Unfortunately Nigerian airlines lack the requisite "critical mass of aircraft" to service and prosper compared to the foreign airlines. Ethiopian Airlines currently operates 50 aircrafts to 81 destinations across five continents with over 200 daily flights. United Airlines has 705 active aircrafts while Delta Airlines has 760 aircrafts on its fleet. The largest airline fleet in Nigeria is Arik Airlines fleet with only 20 aircraft. The size and scale of an airline operation are important. It is very hard to compete against bigger international airlines with just a handful of aircrafts as airlines need a reasonably sized fleet to be able to compete effectively.[31] The alternative is to enter into cooperative marketing arrangements or even to merge. Combining forces could help: "If two or three or more Nigerian airlines joined forces they would have a large fleet size and combined resources and would become more bankable and formidable. Since 2010 when the US Federal Aviation Administration designated Nigeria Category one safety

status, there has been an influx of more foreign airlines into Nigeria. These foreign airlines unfortunately account for 92 percent of the international passengers traffic into and out of the country while Nigerian airlines account for the remaining eight percent. Its previous reports had shown that over 20 foreign airlines repatriated above N400billion made from ticket sales to their various countries every year, of the 2,518,516 international seats from Nigeria, 26 foreign airlines offer 2,316,288 aircraft seats to the Nigeria international travel market every year while their Nigeria counterparts offer only a paltry 202,228 seats. Nigerian airlines are left with just three percent of the air traffic market to and from Nigeria.[32]

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31. Air fleets, Net, "United Airlines Fleet" at http://www. Airfleets.net/united Airlines accused on 16/08/2014

32. This was contained in a report by the U.S. based Sabre Travel Network. See Ekwere, U "Nigerian Airline

The BASA between Nigeria and the UK was signed in 1998. Basically, the agreement allows each country to designate up to three airlines; routes were specified; the capacity provision requires UK designated airlines to operate up to 21 services per week between the UK and named points in Nigeria and vice-versa. The UK-Nigeria market from 2001 to 2010, had a total scheduled traffic of 5,082,924 passengers which was higher than any other single route. In 2010, the route passenger volume accounted for 20.8 percent of annual international passenger traffic in the country. The route should have a maximum of 42 flights per week provided by three carriers from each side. The designated UK carriers, British Airways and virgin Atlantic provided 14 and seven flight per week, respectively, while the Nigeria designated carrier, Arik Air is only able to offer 11 flights per week, UK airlines have 83 percent of the market share while the Nigerian carrier has just about 17 percent of the market share.[33]

The open Skies Agreements that was signed between Nigeria and the USA in 2002 is a fully liberal bilateral air service agreement [BASA] which allowed free designation of airlines by each State, permitted the airlines to operate unrestricted on

any route between the respective countries with unlimited fifth freedom rights available; allowed airlines to set fares freely without seeking approval from the aeronautical authorities of both countries. The agreement was aimed at promoting an international air transport system based on competition among the airlines in the market place with minimum government interference and regulation. As at 2010 the route was a duopolistic market with Delta Airlines (US Airline) dominating with 89 percent other passengers, while Arik Air handled only 11 percent of the routes passengers. Since then, United Airlines, another US Airline has joined Delta Airline to provide service on the route.

33. Shadare, W "Nigeria Has Just 3% of Her Air Traffic Market, says Fadugba," New Telegraph Newspaper, 7th July, 2014.

CHAPTER THREE

3.1 LEGAL LIABILITY REGIMES IN THE AIRCRAFT ACCIDENT IN NIGERIA

"Carriage" has been defined as transportation of freight or passengers[1] by an individual or organization such as ship owner, a railroad or an airline operator that offers himself to transport passengers or goods for a fee[2]. A "Carrier" is anyone who receives goods for the purpose of carrying them from one place to another for hire either under a special contract i.e. as a bailee for reward; or as a common carrier. A common carrier is one who holds himself out as being prepared to carry goods for

reward without reserving the right to refuse the goods tendered and they are under strict liability for loss or damage of the consigned goods. A private carrier, however, is only liable for reward and is therefore only liable for loss or damage due to his negligence or where he is guilty of conversion. Though, a common carrier must not refuse to accept goods, he may however, limit the scope of his profession to certain classes of goods or only carry on specified routes. His refusal to carry goods may be that there is no space available; the goods are tendered at an unreasonable hour; or reasonable freight rate are not paid in advance.

In air transport, a carrier by air may be considered to be a common carrier. The Warsaw Conventions also do not prevent the air carrier from becoming a common carrier. It only stated that the Convention does not prevent the carrier from refusing to enter into a contract of carriage. Although the liability for loss or damage by acarrier by Air is largely governed by statute, there is no reason, why carriers should

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1. Chenz, b. (1962) The Law of international AirTransport, Stevens & Sons Ltd., London, Published under the auspices of the London Institute of World Affairs pp90, 91.

2. The Free Dictionary, at httpillwww.audioenglish.not/dictionary/implement. Htm, assessd on the 22nd January 2015

not be common carriers and therefore be sued for refusal to carry. However, Article 24 of the Warsaw Convention made it clear that whether a carrier by Air is a common or private carrier, his liability loss, or damage to the consigned goods will be governed normally by the various Conventions or the non conventional rules but not the common law.

The provisions of the Conventions which regulate the liability of an Air carrier are Article 18 and 19, which deal with loss or damage of goods and delay respectively. An international carriage therefore is in place when the points of departure and destination are located within

different contracting states or within the same contracting state but stopping point has been agreed upon in another state, even if that state is not a member of the Covention[3]. According to the Black Law Dictionary, "goods" can be described as "tangible or movable personal property other than money especially articles of trade or items of merchandise[4]. In another breath, it has been described as goods transported by a vessel, airplane or vehicle"[5"]. Consequently, goods can be described interchangeably as cargo, luggage or baggage.

Carriage by air is largely governed by international Conventions which set out rules governing liability of carriers. These Conventions are called "regimes of carriage". Where the Conventions do not deal with a particular point of law then the common law principles are resorted to [6].

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3. Article 1 (2), Warsaw Convention.
4. Cambers English Dictionary (1990) 7th Ed, W & R Chambers Ltd. Einburgh.p715
5. Ibid at page 716.

Carriers' liability in the course of air transportation is an extensive and continuously evolving subject. The liability thereof could arise as a result of injury sustained on board an aircraft or death arising from the course of a journey. The liability can equally arise from damage or loss of goods, delay or denial of boarding or from interactions in the course of preparing for or in the actual conduct of flight operations.

A system of compensation for loss or damage arising in air transportation was developed and culminated in the adoption of international principles codified in the International Conventions most significant among them is the Convention for the Unification of Certain Rules Relating to International Transportation by Air (Warsaw convention) 1929[7].

Following the constant growth in air transportation and advancement in air technology and development, the Convention was modified and modernized under the initiatives of the

International Civil Aviation Organization (ICAO) hence the adoption of the Montreal Convention 1999.

3.2 LIABILITY UNDER WARSAW CONVENTION 1929

This is a multilateral treaty which attempted to regulate issues relating to liability arising or emanating from international air carriage of passengers, goods and mail. The cardinal aims and purposes of the Convention can be highlighted as follows:-

i. To establish some degree of uniformity in travel documentation such as tickets and other procedural and substantive rules of law which would govern claims arising out of international air travel.

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7. Cooper J.C, "Roman Law and Maximcujus Est Solum in International Law" McGill University, at ww.law journal Mcgil. Eg/userfiles/other 3967 9-1. Cooper pdf, assessed on the 22/1/2015.

ii. To limit the potential liability of air carriers in the case of accident[8].

This Convention therefore according to Callistus E. Uwakwe[9] imposed a rebuttable presumption of liability on air carriers in respect to accidents occurring on board aircraft or while the passenger was in the course of the operation or of embarking or disembarking, and to limit the liability to 125,000 francs[10]. However in event of checked baggage and cargo and where the carrier expressed to be liable if the occurrence which caused the damage happened during transportation by air, the liability is limited to 250 francs per kilogram.[11] Although this limitation would not operate if the consignor made a special declaration of value at the time the goods were delivered to the carrier, and paid a supplementary charge so required

3.3 LIABILITY UNDER HAGUE PROTOCOL, 1955

This protocol is titled: Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air. It was opened for signature September 28, 1955 and entered into force on August 1st 1963 after its ratification by 30 countries.

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8. Callistus E. U, Introduction to Aviation Law in Nigeria (2006) Aviation Publishing and Consultancy Ltd, Lagos P141.

9. Ibid p. 141.

10. See Article 22 (4) Warsaw Convention 1929

The intendment of the protocol was to increase the limits of liability under the Warsaw Convention by removing the reference to "International transportation" and

replaces same with "International Carriage". The protocol equally increased the liability limit in respect of passengers under Article 22 to 250,000 Gold francs and a definition of "willful misconduct" was inserted in the provision of Article 22. Nigeria government ratified the Hague protocol on 1st July 1969, the provisions however were never made part of Nigerian Local Legislation.

The insertion of the term "willful misconduct" under amended Article 22 was to shift the onus of prove on the passengers to strictly prove to the satisfaction of court that the damage suffered by him was caused as a result of willful act, misconduct or negligence of the carrier[12]. This provision shifted the burden on the passengers victims as they are likely to be faced with technical and administrative difficulties to be able to establish on the balance of probability sufficient facts to establish willful misconduct on the part of the carriers. However, sections 136 and 137 Evidence Act[13] is greatly helpful to passengers as the Section shifts the onus of proof on to the carrier being a party who would fail if no evidence at all were given on the either side having regard to relevant presumption inherent in the case.

3.4 LIABILTY UNDER MONTREAL AGREEMENT

Sometime in 1956, [14] the United States of America denounced its approval of the Warsaw Convention on the sole ground that the treaties made provision for a rather

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12. See Section 135 (1) & Evidence Act 2011 as amended CAP 112, Laws of Federation 2004.

13. Ibid at note 12.

too low limit of liability of the carrier. Consequent upon this denunciation, air carriers serving the United States met at Montreal and reached a consensus agreement with the Civil Aeronautic Board (CAB) to the effect that any contract of carriage which included a point in the United State as a point of origin, point of destination or agreed stopping place, the limit of liability in respect of injuries suffered by passengers would be $58,000 US Dollars exclusive of costs, or $75,000 US Dollars inclusive of costs.

Worthy of mention is the fact that Montreal Agreement was not a treaty but rather a domestic and private agreement between the United State Civil Aeronautic Board (CAB) and the affected carriers within its jurisdiction. Accordingly, any foreign air carrier wishing to ply the United States was required under the law of the United State to sign the Montreal Agreement before issuance of necessary permits to operate in the United States.

The agreement clearly shows and indicates the extent of respect which the United State has for the well being, lives and properties of its citizens. This Agreement in my view is within the Warsaw scheme considering the fact that Warsaw Convention under Article 22 made a patent provision for higher liability limit by way of special contract between the carrier and the passengers. To this end, it can be inferred that the Authority of the United States represent the passengers in entering into the Agreement with the carriers.

3.5 LIABILITY UNDER GUATEMALA PROTOCOL 1971 & MONTREAL PROTOCOL 1975

Sometime in 1971, another protocol came to limelight to amend the Warsaw Convention and Hague Protocol at the city of Guatemala. The intendment of this protocol is to increase and

indeed increased the limit of liability in the case of passengers to 1,500,000 francs approximately 100,000 US Dollars. The adoption of this protocol was traded on condition that it becomes effective only when it is ratified by the United States.

This protocol however gave birth to the Montreal Protocol of 1975 which sought to amend Warsaw Convention, Montreal and Guatemala protocols for the purpose of changing from Gold Francs to Special Drawing Right (SDR) as the unit of currency in the international monetary transaction, therefore changed the liability limit of carriers in respect of passengers from 1,500,000 francs under Guatemala protocol to 100,000 Special Drawing Rights.

3.6 LIABILTY UNDER IATA INTER CARRIER AGREEMENT

International Air transport Association, a non –governmental private Organization of airline has strong ties with global governments and a considerable international influence. Members of this Association met in June 1995 in Washington D. C for the purpose of discussing the limit of liability under the Warsaw Convention and the attached protocols.

The IATA Inter Carrier Agreement and a separate implementing Agreement known as the IATA Agreement on measures to implement the IATA Inter Carrier were reached. Agreements were all adopted in October 1995 and June 1996 respectively. Another Agreement known as IPA was negotiated by the Air Transport Association of America and adopted for only US carriers.

Under the Inter Carrier Agreement. It was agreed that the carrier shall waive all limit of liability in respect of recoverable compensatory damages in passenger's injury and death cases, but preserve their Article 20 (1) which create the defence of all necessary measures for that portion of claim which exceed 100,000 SDRS. The Agreement further include optional

provisions that damages were to be determined in accordance with the law of domicile or permanent residence of the passenger, and that a lower limit than 100,000 SDR for the waiver of Article 20(1) defence would be allowed on certain routes.

The European Community Council on October 1997 also promulgated a regulation governing carriers having operating licences issued by a member state.[15] The Regulation created a liability regime akin and similar to that established by IATA inter carrier Agreement i.e unlimited liability with the Defence of Article 20(1) preserved for that portion of claim above 100,000 SDR.

3.7 MONTREAL CONVENTION 1999

The Convention was adopted on May 28 1999, but came into force on 4th November, 2003. Nigeria was one of the original signatories to the Convention in May 1999 but did not deposit the instrument for ratification until May 10th 2002.

15- Council Regulation (EC) 2007/97 on air carrier liability in the event of Accident 1997 which came into force on November 18th 1998.

This Convention in effect has been incorporated into Nigerian Aviation Law by Local legislation in 2006.[16] The Convention was created and signed by representatives of 52 Countries at an International Conference convened by the International Civil Aviation Organisation (ICAO) in Montreal on May 28th 1999. Out of this number, representatives of 30 countries have formally ratified the Convention and incorporated same into their respective Local Aviation Legislations.[17] The Convention prevails and takes precedent over all other rules and legislations on carriage by air as the Convention today represent current air carrier liability regimes around the world. In effect, the Convention made significant changes to the scope and extent of the carrier's liability, expands the jurisdiction where the carrier can be sued, and recognizes the effect of code sharing on air carrier liability.[18]

3.8 LIMITED LIABILITY IN DEATH AND BODILY INJURY

The most important Articles of the Montreal Convention is Article 22.1 which technically removes the limits of liability contained in Article 22 of the Warsaw Convention particularly with respect to carriers liability for death or bodily injuries suffered or sustained by passengers in the international air transportation. Article 21.1 provides to the effect that the carriers are liable without proof of fault in event of death or bodily injury of a passenger caused by an accident on board the aircraft or in the course of any operation of embarking or disembarking for 100,000 special drawings (SDR).[19] In this regard, the carrier will not be able to exclude or limit its liability because the liability is strict.

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16. See Section 48 Civil Aviation Act 2006.

17. Cheng, B. (1962), The Law of International Air Transport, Stevens & Sons Ltd, London, Published Under the auspices of the London Institute of World Affairs pp. 91-92

[19] However, where damages are sought by passengers in excess of 100,000 SDR the carrier is liable for unlimited damages when the passenger is able to establish and prove to the satisfaction of the court that the injuries suffered were as a result of the negligent act of the carrier.

Thus, if the carrier cannot exonerate itself from the negligent act or series of acts that led to the accident, punitive, exemplary and or other non – compensatory damages may be claimed and recovered from the carrier. Accordingly, it is only on the basis of the Montreal Convention 1999 that passengers can institute an action for damages in respect of injuries so sustained in international air transportation.[20]

It is therefore inferable from the provisions of the Montreal Convention particularly Article 21.2 that liability of the carrier in event of an accident is absolute, strict and indefensible. This is because from the totality of every accident, it is difficult for the carriers to prove and establish on the preponderance of evidence that the damage sustained by passengers was not due to

any negligent act of the carriers or their agent, or that the accident was caused solely by the negligence, wrongful action or omission of some other persons, [21]. It is recognized under the Convention that, National Laws may make provisions for advance payments to those entitled to claim compensation[22], and that such advance payments does not constitute recognition of liability or legal admission. As provided in the Warsaw Convention, the Montreal Convention also required the passenger to prove that he has sustained bodily injury.[23]

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20. Montreal Convention therefore eliminated the language of Article 20 (1) Warsaw Convention that the carrier is not liable if it took all necessary measures to prevent the loss.

21. The Montreal Convention does not preclude the carrier from seeking redress against any other person who may be liable for damages sustained by passengers, though may be allowed under the laws of some countries where an indemnity or contributory action is precluded where the carrier's liability is based on contractual rather than tortious liability.

3.9 LIABILITY FOR BAGGAGE, CARGO AND DELAY

The Montreal Convention 1999 equally to some extent amended the provisions of the Warsaw Convention concerning claims for delay, loss of baggage and Cargo claims. With regards the flight delay, the liability of the carrier to the tune of 8,300 US Dollars under the Warsaw Convention has been reduced to 4,150 SDRS (approximately 5,685 US Dollars).[24] Although the defence of all necessary measures in the Warsaw Convention still remain in form in the Montreal Convention in respect of passengers, baggage or delay of Cargo. With respect to loss, damage or destroyed baggage, the airline's liability, unlike the Warsaw provision which premised same on the weight of the checked baggage, the Montreal Convention limits the liability at 4,150 SDR (approximately 5,685 US Dollars). The only exception to this provision arises when the passenger makes a special declaration at the time the baggage was handed over to the carrier and paid a declaratory sum thereon. However, for the purpose of legal competency to make a claim and pursue a cause of action, Article 31 of the Montreal Convention[25] wholly and substantially incorporated the provisions of the defunct Warsaw Convention to the effect that, for a passenger to be able to make claims for damages in

respect of damaged checked baggages, he must make the claim within period of seven days from the receipt of the baggage, and for delay,

such a claim must be made within period of 21 days from the date on which the baggage or cargo have been placed at the disposal of the passenger.[26]

3.10 LIABILITY FOR DOMESTIC CARRIAGE WITHIN NIGERIA

At present, the governing laws and regulations on domestic operation in Nigeria is as contained in the third schedule to Civil Aviation Act, 2006 applicable by Section 48 (2) of the Act.

Before the Act was enacted and passed in to law in 2006, as a matter of policy, the Civil Aviation Policy 2001 specifically provided that "all Nigerian carriers wishing to go on International Operations shall adopt the liability limit set in the Montreal Convention.

The policy made the following provisions in respect of domestic operation vis – a – vis the limit of carriers' liability:

a. Compensation in case of death or injury of passengers 100,000 US Dollars.

b. Damages arising from destruction, loss, damage or delay of baggage 1,000 US Dollars.

c. Compensation for destruction, loss, damage or delay of cargo 20 US Dollars per kg.

According to Section 48 (2), the provisions of the Montreal Convention 1999 as modified and set out in third schedule of the Act (as may be amended from time to time) have force of law and apply to non-international carriage by air within Nigeria

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26- Note Article 32(3) to the effect that such compliant must be made in writing and dispatched within the time frame, and Article 32 (4) that if no complaint is made within the time frame, an action for damages lies in accordance with the items of this Convention against those representing the estate of the passenger.

irrespective of the nationality of the aircraft performing the carriage. In the same vein, Section 48 (3) in strict compliance with Article 28 of the 1999 Convention required payment of an advance payment of 30,000 US Dollars equivalent within a period of 30 days payable to the natural person or such other natural persons who are entitled to claim compensation in order to meet the immediate economic needs of the person affected in the accident or that of his immediate family.[27]

It is obviously clear that the Montreal Convention 1999 is a comprehensive and extensive overhaul of the Warsaw Convention. Hence it is the most sweeping revision in the last seventy – five years to the international air transportation liability regime. The primary and fundamental features of the Convention include the elimination of earlier limitation on liability for passengers death and personal injury claims. It virtually gives the carrier no legal defence to passengers' claim arising from accident and gives the Passengers' additional jurisdiction to sue the carrier for a more widely compensatory claim. The Convention features prominently on commercial realities on code sharing, to the extent that, it accommodate legal rights and opportunity to file civil suit against both the contracting carrier and the operating carrier as a result of claims for bodily injuries or death of passengers.

Thus, if an actual carrier performs the whole or part of the carriage which according to the contract referred to in Article 39 of the Convention, both the contracting carrier and the actual carrier shall be liable except as otherwise provided subject to the rules of the Convention. Thus the former (actual carrier) shall be liable for the

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27. The Section further states that this advance payment shall not constitute admission on the part of the carrier and same may be set off against any amount subsequently payable as damages by the carrier.

whole of the carriage contemplated in the contract, while the latter (contracting carrier) shall be liable for the carriage which it performs.[28]

Negligence can be defined as the omission to do something which a reasonable man, guided upon those considerations which regulate conducts of human affairs would do, or doing something which a prudent and reasonable man would not do involved existence of a duty or some duty, breach of those duties which eventually result in damage suffered by the complainant. One may therefore be tempted to ask whether the relationship between the carrier and the passenger and that of the passengers and the Civil Aviation Authority are cogent and sufficient enough to create a duty of care that can warrant a liability for negligence?.

If the answer to the above poser is in affirmative, one may further ask who is to be sued? Is it the carrier alone or both the carrier and the Civil Aviation Authority, or the carrier, the pilot, the manufacturer and the Civil Aviation Authority jointly?

LIABILITY UNDER STATUES

On the part of the Nigerian Civil Aviation Authority, a body corporate with perpetual succession created by section 2 of the Civil Aviation Act 2006, it is glaring and patently clear on the face of the Act[29] that the Authority, members of its Board, its

Director General, or any other employee of the Authority may be sued for any act

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28-. See Article 40 Montreal Convention. See also Article 36(1&2) which described a carriage performed by various carriers as successive carrier and deemed all the carriers that participate in the carriage to be one of the parties to the contract in so far as the contract deals with that part of the carriage. According the Article, passengers can only take action only against the carrier which performed the carriage during which the accident occurs except where by express agreement the first carrier assumed liability for the whole carriage.

done in pursuance or execution of any public duty under this Act or any law or enactment in respect of any alleged neglect or default in the execution of any public duty under the Act which neglect or default result in to injury or damage to any body who has the capacity to

institute an action. Although the Act did not specify whether the right to sue here is either civil or criminal, one can assume it is civil since Section 174 of the 1999 Constitution still retained and remained the overriding Section empowering the Attorney General to institute and prosecute criminal cases.

If however, the assumption is right in holding the view that a right of action is created and established by the Act against the Civil Aviation Authority, its management and employee in civil cases, the pertinent question then is what constitute the cause of action to make the intendment of Section 24 so pertinent?.

To this end, the Civil Aviation Authority in Nigeria has free and unobstructed access to all civil aviation personnel, aircrafts, aviation facilities, to inspect aircraft, aircraft manufacturers and maintenance facilities or organizations, training facilities (including simulators), and other appliances designed in air transportation, as may be necessary to enable the Authority to issue and grant Certificate of registration or approval to any aircraft, aircraft manufacturer and maintenance facility or organisation[30].

Similarly, the Authority has the power to issue, amend, vary, cancel, refuse and suspend any certificate and can validate and prescribe in such certificate terms, conditions and limitations as may be required in the interest of safety. It can also develop, issue and amend airworthiness directives, bulletins, orders, terms and conditions to bring such directives into conformity with the prevailing airworthiness requirements. Most importantly, the civil aviation Authority has the power to monitor and supervise the conditions under which an aircraft may carry passengers, mail and cargo or under which aircraft may be used for other purposes and

[30] Section 30 (2) (a) (i)

can prohibit an aircraft from the carriage of such classes of goods as the Authority may prescribe from time to time[31].

The aforementioned powers of the Civil Aviation constitute statutory duties imposed on the Authority, failure of which if resulted in to injury to any person it may engender a civil cause of action of tort of negligence against the Authority. The statutory duty inherently imposed on the Aviation Authority can be equated to the statutory duty of care needed to ground or establish a case of negligence against the carriers. For example, the Aircraft Investigation Bureau that Investigated the accident involving the Aircraft registered as 5N-ATE owned by Network Aviation Services which crashed at Igbogbo Village, Ikorodu, Lagos State on the 16th June 2001, had it on record that the aircraft was originally owned by Astro Surveys Limited, Kano, Nigeria until 1993 when ownership of the Aircraft changed and the Network Aviation Services became the new owner[32]. According to the report, when the Aircraft was changing ownership, the "private category" on the original Certificate of Airworthiness ought to have been simultaneously changed from private

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31. The Authority also has the power to regulate the required standard for air traffic services and prescribe air traffic regulations, rules and conditions on aircraft flight.

32. See Federal Ministry of Aviation, Accident Investigation and prevention Bureau Civil Aviation Accident Report on the Accident to the Network Aviation Services p 68c aircraft registered as 5N – ATE that Crashed at Igbogbo Village, Ikorodu Lagos on 16th June 2001 and presented to the Hon. Minister of

category to multipurpose aviation category since the primary purpose of business of the new owner is not for aerial surveying profession but a multipurpose aviation business not including surveying profession. It therefore as it appeared on the report shown that the Network Aviation Ltd was actually operating the aircraft in the category which was in contravention with the authorization granted to the aircraft on its certificate of Airworthiness. The implication of this is that the certificate of Airworthiness of 5N-ATE should have been re-issued when the aircraft was changing ownership in 1984[33], which necessitated the ownership name on the

certificate of Registration to change from Astro Survey Ltd to Network Aviation Services Ltd. This is strictly necessary as every certificate of airworthiness specifies such a category as is appropriate for the use of an aircraft and every certificate is issued on the condition that the aircraft shall be flown only for the purposes indicated on its certificate of airworthiness. Thus, the 5N-ATE aircraft with a certificate of airworthiness displaying "private category" was completely wrong to be flying for the purpose of "Aerial work category" which is for hire and reward. In the same vein, a Nigerian registered aircraft, shall not fly if any part of the aircraft or its equipment as is necessary for the airworthiness of the aircraft has been overhauled, repaired, replaced or modified except a certificate of compliance has been issued that such maintenance has been performed on the aircraft and such certificate must be entered into the Aircraft logbook and signed by a licensed maintenance Engineer.

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33. The implication in this complexity is that, under the 'Aarial Work Category" the owner of ATE Aircraft did not have options of maintenance other than to follow the maintenance schedule as in accordance with the suggested aircraft manufacturer's prescription, or as pre-arranged with the Regulatory Authority whereas under the "private category" the owner has the option to maintain these aircraft as minimal as pre-planned by the manufacturer, or opt for higher standard as prescribed for the Transport category.

However, and in deviation from above mentioned requirement, it was discovered on investigations that the 5N-ATE Aircraft was sometime in June 1999 taken out of Nigeria to either Colchester in United Kingdom or Accra, Ghana for extensive maintenance and there is no entry to that effect logged into the Aircraft logbook. It is therefore not certain whether the company that carried out the extensive maintenance and modification works on the aircraft was one of the maintenance organization approved by the NCAA to work on Nigerian Aircrafts[35]. Notwithstanding this lacuna, the NCAA went ahead, and renewed the certificate of airworthiness for the aircraft for the period between February 2000 to February 2001. This is a gross contravention of the Nigerian Civil Aviation regulation concerning mandatory logbook entries.

In the light of foregoing breach of duties mandatorily provided by statutes on the part of the Civil Aviation Authority breach of which goes to the root of safety of the aircraft and air transportation, such breach of duties are weighty enough to constitute a cause of action against the Authority in favour of any passenger who may have sustained any injury or suffer any loss as a result of any aircraft accident caused or attributable to breach of the duties[36].

Consequently, it is not only neglect of statutory duty, but a gross manifestation of official incompetency for the Civil Aviation Authority to renew the certificate of airworthiness for the 5N-ATE Aircraft for the year 2000 to 2001 when, it is patently clear that the aircraft has been extensively overhauled and no record to such extent

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35. The surveyors of the Civil Aviation Authority (NCAA) according to the Bureau report erred and are wrong by re-issuing the certificate of airworthiness to the carrier under the private category regime – see page 16 of the Report. see also the civil Aviation Regulation of 1965

of overhauling was logged on the logbook. Although this is a grave error on the part of the surveyors who are the employees of the NCAA but the NCAA can be vicariously liable accordingly[37]. Similarly, it is wrong and a sign of lack of prudence on the part of the Civil Aviation Authority to allow the 5N-ATE aircraft originally designated as private to be flying for an aerial service without re-issuing the certificate. This is also a breach of duty that engender liability and a cause of action against the Authority[38].

LIABILITY OF THE CARRIERS IN TORT

On the part of the Airline carriers, there is no doubt that the quantum of duty of care placed on them in favour of their passengers is enormous in the sense that the contractual relationship between a carrier and its passengers is for safe carriage or landing at their various destinations.

It is obvious and unambiguous from the relevant provisions of the Civil Aviation Act 2006[39] that where injury or damage caused to any person or property on land or water by an article or a person in or falling from an aircraft while in flight, taking off or landing, damages in respect of such injury or loss shall be recoverable against the carrier or the owner of the aircraft, although where the aircraft so involved in the accident has been bonafide demised, let or hired out to any person or authority by the real owner, it is required that, it becomes necessary to establish that the Pilot,

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37. See the case of R. O. Iyere Vs. Bendel Feed and Floor Mill Ltd (2008) 12 MJSC, 102 at 121 where the Supreme Court was of the view that when a master employs a servant to do something for him, he is responsible for the servant's conduct as if it were his own. If the servant commits a tort in the course of his employment, then the master is a tortfessor as well servant.

38. See also the final Report on the accident to Sosoliso Airlines DC9 – 32 aircraft registered as 5N-BFD which occurred at Port Harcourt on 10th day of December 2005 involving members of the Federal Aviation Authority and prevention Bureau reported.

Commander, navigator or operative members in the aircraft are employees of the real owner, otherwise, the hirer shall be considered to be the owner for the purpose of liability in this respect. Although, the liability in this context is strict in respect of third parties who are not passengers to the carrier but the statutory liability according to the wordings of the Civil Aviation Act 2006 against the carrier is in tort of negligence which has been painted a picture of strict liability. Most importantly, the Act[40] made reference to the second schedule to the Act[41] with respect to the liability of the carrier in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage. Similarly, sub section 2 of section 48 of the Act having referred to third schedule of the Act pegged the liability of the carriers in respect of non-international carriage by air within Nigeria, irrespective of the nationally of the aircraft performing the carriage and that of the passengers on board of the aircraft.

Further on this submission, it is pertinent to highlight the intendment of the relevant portions of the modifications to the Conventions for the Unification of certain Rules relating to

international carriage by Air (called montreal Convention 1999) attached as 2nd and 3rd schedules to the Civil Aviation Act 2006.

According to the Rule,[42] the carriers are liable for damage sustained in event 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

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40. See Section 48 of the Act, 2006

41. i.e the Convention for the Unification of certain rule, relating to International Carriage by air signed at Montreal on 28th May, 1999 as amended from time to time.

the operations of embarking or disembarking, and in respect of baggages upon condition 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 charge of the carrier[43]. Article 21 of the Montreal Convention (1999) makes the carrier strictly liable to its passengers if the claims of the passenger does not exceed 100,000 SDRS, but where the claim exceeds 100,000 SDRS, the Convention required the passenger to prove that the damage, loss or injury sustained by him was due and as a result of negligent act or other wrongful act or omission of the carrier.

This provision of Article 21 of the Convention needs to be read in conjunction with paragraph 3 of section 48 of the Act which mandate the carriers to make advance payment of at least 30,000 US Dollars within 30 days from the date of an accident to the natural person or such natural person who are entitled to claim compensation for the passenger. The consequence of the two distinct provisions is to create strict liability in tort against the carriers in favor of the passengers to the extent of the sum of N100, 000 SDRS[44] out of which 30,000 US Dollars shall be paid in advance. It is therefore established on the face of Article 21, Montreal Convention 1999 and sections 48 and 49, Civil Aviation Act 2006 that the carriers have been held strictly

liable for their negligent act resulted from any aircraft accident to a certain extent, and can still be held liable to a larger extent by the passenger on proof of negligence. The next task therefore, is how to establish a wider claim of negligence against the carriers?

It has been held by the apex court that in negligence cases arising from accidents, the burden of proof falls on the Plaintiff who alleges negligence. This, according to the court is because negligence is a question of fact and not a question of law and it is the duty on he who asserts it to prove it by proving the particulars of negligence in his pleading and evidence[45].

To this end, Article 21(2) Montreal Convention 1999 was so emphatic on the evidential burden of proof placed on the Plaintiff to the extent that a passenger shall not be able to hold a carrier or any other stakeholders liable for damages exceeding 100,000, Drawing Right except he can establish that the negligence or other wrongful act or omission of the carrier or its servants or agent are responsible for the accident that resulted in to the injury.

For instance, Airframe and power plant manufacturers always prescribe how their products and other system components are to be maintained for the onward reliability and airworthiness of the aircraft. For this reasons, air frames life is usually broken into series of periodical maintenance, inspections and reliability checks, such as A - check which comes up on every 50 hours, of operation B – checks, C-checks and D-checks at the accomplishment of certain number of flight hours or at a certain number of calendar years in service, which ever comes first upon expiration of time lag the aircraft must be torn down into its certain basic structure and be duly inspected or maintained in accordance with a prescribed standard. Similarly, the

45. See Ogbuagu JSC in Alh. Kabiru Abubakar Vs. John Joseph (2008) 8 MJSC, page 1 at 34. See also the case of Ojo Vs. Gharoro (2006) 5 MJSC, page 24 at 89-90 where the supreme court was of the opinion that in negligence cases a Plaintiff must not only plead particulars of negligence, he must lead evidence of the negligence.

maintenance lives of the Engines are scheduled for periodic inspections and maintenance requirement, such as the time between overhaul (TBO), boroscope inspection of critical and sensitive dynamic parts within a turbine engine core[46].

According to AIB report reference No. 04/380[47] Textron Lycoming incorporation, manufacturer of the power plant of the crashed aircraft manufactured the power plant which consisted of 2 in – line Horizontally reproaching engines type 10-360-AIB6, which were fitted to the airframe of the aircraft in 1981. After the crash in year 2001, a detailed and thorough investigation conducted by the AIB into the cause of the high temperature on No. 1 Engine as reported by the onset of the mishap after the Engine No. L – 21196-51A was removed from the wreckage and disassembled in the AIPB's workshop at Ikeja; Lagos revealed that this type of Engine is normally due for total overhaul after operating about 2,000 hours in service, and according to the service instruction No. 1009 AQ, the manufacturer recommends that, in the alternative, the Engine be overhauled periodically every 12 calendar years interval, whichever comes first. The aircraft (as at the date of Investigation) which was 20 years of age only flew 528 hours in its life time, but it has never been overhauled in the last 20 years. Accordingly, the overhaul should have been performed since 1993, but this was overlooked as at when due and the certificate of airworthiness was symbolically renewed.

46. TBO inspection entails that the engine of the aircraft be completely knocked down for detailed inspection, measurement of clearances to specifications and total replacement of some parts within the engine core and shell.

47. On the accident involving P68C aircraft registered as 5N-ATE they crashed at Igbogbo Village, Ikorodu, Lagos state on 16th June 2001.

Further investigation on No. 1 Engine revealed the following discrepancies which in the opinion of the AIB's experts are contributory to the initial problems of the Engine overheat, namely:

a. Intake Air Filter – The air filter, which ordinarily filters the atmosphere air in to the induction system of the Engine cylinders, was almost totally blocked by dirty and dust. This could account for partial loss of Engine power as power

developed by any Engine under this condition would be grossly inadequate to sustain the flight.

b. The Engine Oil Cooler – The exchanger of the engine oil cooler's air-dust side was about 90% blocked by dirty and longtime dead insects such as bectles, moths, butterflies crickets, leaves and caked engine oil. From the report, it looked as if the heat exchanger had never been removed for cleaning since the original installation at the factory. The most annoying discovery as it appeared on page 20 of the report was that the aircraft logbook had it that the oil cooler was newly replaced and has only 54 flying hours before the crash. This claims was declared false, misrepresentation and unacceptable by the AIPB on page 21.

c. Engine oil Pressure Hose – The Engine Oil pressure line from the oil cooler, which was carrying lubricating oil into the Engine accessory gear box was discovered having fibrous rupture and had snapped into two, due to depreciation from high oil temperature or mishandling by personnel. The two severed rough ends were then passed through the hose's canvass conduit. The engine oil was badly seeping through the woven canvass and evidence of such seepage was manifested around accessory gearbox area, that some accessories like magnetos, engine driven fuel pump, engine driven propeller were all sprayed with engine oil, which made everywhere looked messy and soggy with oil.

In the light of the aforementioned scenario, it is patently clear that the findings of the Accident Investigation Bureau indicted the carrier and the Civil Aviation Authority to the extent that the faults that lead to the accident were shared between the carrier as a corporate entity and its pilots on one hand and the staff or employees of the Nigeria Civil Authority on the other hand.

It is therefore on the authority of *Alh. Kabiru Abubakar & 1or Vs. John Joseph & 1or*[48] that all the basic ingredients needed to prove and establish tort of negligence are readily on ground in favor of an aggrieved passenger against pilot, the carrier company and the Civil Aviation Authority respectively. However, it is pertinent to state that claim of negligence, in accident cases is not granted by court as a matter of course but the Plaintiff has the onus of proof lying on him to prove who was actually negligent, whose negligent act actually and substantially caused the accident by determining whether or not that person could have avoided the accident by the exercise of reasonable care[49]. Accordingly, it is the duty of the Plaintiff passenger to prove his case against the defendant on the scale of preponderance of evidence or in consonance with the statutory requirement of section 134 of the Evidence Act 2011

Casamended. In doing this, the Plaintiff (passenger) must establish that a cause of action is constituted in his favour by [illegible] him a substantive right to make the claim against the relief or remedy being sought.

Thus, the factual situation on which he (the Plaintiff) relied upon to support his claim must be recognized by law as giving rise to a substantive right capable of being claimed or enforced

48. (2008) 8 monthly judgment of supreme court, p.1 at 25 paragraph F – G

49. See Shogo Vs. Adebayo (2000) 14 NWLR Cpt. 685) page 121. See also Nigilari Vs. Mother Cat Ltd (1999) 13 NWLR, (pt 636) p. 626 where it was held that mere occurrence of an accident of not proof of negligence.

32. (2008) 8 monthly judgment of supreme court, page 1 at 25 paragraph F – G

33. See Shogo Vs. Adebayo (2000) 14 NWLR Cpt. 685) page 121. See also Nigilari Vs. Mother Cat Ltd (1999) 13 NWLR, (pt 636) page 626 where it was held that mere occurrence of an accident of not proof of negligence.

against the defendant. i.e. the factual situations relied upon must constitute the essential ingredients of an enforceable right[50].

LIABILITY IN CONTRACT

Air transportation is founded on the contract for transportation of goods and passengers, in which case goods or passengers are transported to other destinations or other countries either in container or ordinary cargo. Contract of International sale of goods are usually intertwined with other contracts under which goods or passengers are transported or exported e.g. the contract of insurance by which goods and passengers are insured.

In practice, it is not difficult to determine whether a contract is for carriage of goods, or passengers because the terms of contract usually contained provisions dealing with the place of delivery of the goods or passengers and the mode of transportation to the place of destination.

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50. See Hon. Justice Aloysius Iyorgyer Katsina – ALU JSC in the case of Chevron Nig. Ltd. Vs. Lonestar Drilling Ltd. (2007) All FWLR (Pt. 360) 1, paragraph A – G.

Also, the rights and duties of the contracting parties vary greatly depending on their persons or private arrangement as to place, method of delivery and payment. The transport delivery document i.e. the Airway Bill or ticket plays an important role in the performance of the carriage contract. Usually, the shipper or his agent submits the shipper letter of instruction to the carrier for airway bill to be issued and the carrier acknowledges acceptance of goods for carriage by retuning the confirmed original of the air way bill. The carrier has the right, in the

presence of the shipper and airport security or customs Authority to check contents of the shipment submitted for his transportation.

The shipper equally has the right not to accept shipment if it cannot be inspected[51]. Where goods are insured under the air waybills, with the shipper providing proof of the value of goods with an invoice or declaration, the shipper pays premium and the amount of insurance and premium must also be entered in the air waybill. Where the shipper does not specify the route to be used or the air carrier to carry the goods in the air waybill, the carrier shall determine the route and the manner of shipment. It must be stated that the departure and arrival times as printed in the carriers time table is not considered as part of the contract of carriage. However, where there is cancellation of flight due to reasons beyond the carriers control such as force majeure;- a situation whereby a contract is rendered unperformable due to no fault of either party e.g weather conditions, war, strike of carriers organization etc. the carrier may delay, a derivative of a contract of international sale of goods, the main

parties thereof are the shipper and the consignee (passenger). It is therefore settled that the relationship between the Air transport or Air carrier and his passenger or consignee is purely contractual and can be said to be governed by the general principles of law of contract breach of which can be remedied accordingly. This necessitated the decision of court of Appeal in *Harka Air Services (Nigeria) Ltd vs. Emeka Keazor Ese.*[52] The plaintiff, a legal practitioner was a passenger transported on board the defendant appellant's aircraft TU 134 on a domestic route from Kaduna to Lagos on 24th June, 2005. While the Aircraft was landing at the Airport, Ikeja, Lagos, it violently hit the tarmac and caught fire hence the crash. As a result of the Accident the Plaintiff/Appellant claimed to have sustained injuries and lost of his personal

51. The carrier may accept the goods with its values cleared for carriage, but the shipper must prove this value in form of document stating such value such as invoice or a declaration upon which a valuation charge shall be paid by the shipper for the declared value of goods and same shall be entered in the air Way Bill.

35. The carrier may accept the goods with its values cleared for carriage, but the shipper must prove this value in form of document stating such value such as invoice or a declaration upon which a valuation charge shall be paid by the shipper for the declared value of goods and same shall be entered in the air way Bill.

effect, hence the Plaintiff suit against the defendant before the Federal High Court, Lagos claiming the sum of five Million Dollars. Although judgment was entered in favor of the Plaintiff/Respondent in a lesser sum, the court of Appeal held that:

> *"It is not in controversy that the action or claim before the lower Court was based or predicated on the contract of carriage between the Plaintiff and the Defendant Airline company".*

It is therefore apparent view that the relationship between passengers and air transport carrier is contractual in nature and all elements, terms and conditions of ordinary contract are attributable to the relationship. To this end, the most pertinent question is when can we say the contract of Air carriage has been breached, particularly when there is an accident and what are the cause of actions through which an aggrieved party in the contract can pursue to remedy his grievances?. It is a common knowledge that a contract is generally breached when one of the parties

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52. (2006) 1, NWLR, pt. 960 p. 160 at p. 194 – 195.

thereof has broken any of the terms of such contract as a result of which a party sustained loss or injury[53]. It can therefore be inferred that the ultimate end in the contract of air carriage stem out of the duties and obligations of the carrier particularly with regards safe delivery of passengers and luggages which are subject matter of the contract.

Thus, loss of goods, death or any bodily injuries suffered by a passenger as a result of an accident which occurred while on board of aircraft operated by the carrier can be attributed as breach of safe delivery of the affected passengers or their goods which is envisaged and considered the ultimate end result of a contract of air carriage.

It is trite however, that once a party to a contract establishes to the satisfaction of a court of law that the other party has committed a breach of contract, the most common claim is that for damages and certainly it is the most readily granted type of remedy granted by courts[54].

For an injured or aggrieved person to commence and succeed in an action for breach of contract of air carriage, such a person must prove and establish that there is a valid and prima-facie contractual relationship between him and the carrier being sued as Defendant. i-e. There is offer, acceptance and consideration[55]. Though it is expected that an acceptance must unqualifiedly accept a particular offer. An offer can be identified as a definite undertaking made with the intention that it shall

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53. See Omega Bank Plc Vs. OBC Ltd (2005) 2 MJSC, 26 at 48 where the Supreme Court held that there are three essential ingredients of a valid contract namely; an offer, an unqualified acceptance and a consideration.

54. Supra at p. 63

become binding on the person making it as soon as it is accepted by the addressee of the offer[56].

A validly contracted contract of air carriage can be breached in any of the following circumstances:

a- **DELAY:** An air carrier is liable for damage occasioned by delay in the carriage by air if passengers, luggage or goods do not arrive at the Airport of destination within seven days of the time when they should have arrived under the provisions of the Convention and give rise to a cause of action except where the carrier can prove that he has taken all necessary measures or there was a contributory negligence on the part of the passengers[57]. Similarly, where the delay is caused by weather condition despite all diligence on the part of the carrier, the carrier will not be liable[58].

b- **LOSS OR DAMAGE OF GOODS:** The Air carriers are liable for damage sustained in event of destructions or loss of or damage to any registered baggage or any goods

if the occurrence which caused the damage so sustained took place during the air carriage[59]. It could be seen from the wordings of the relevant Conventions and protocol that carriers' liability as to loss or damage of goods can only arise if the loss or damage occurs during air carriage. An air carriage therefore can be defined as the period during which

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56. See the case of pahalpina international transport Vs. Densil underwear (1981) 1 Lyoyds Rep 187, where it was field that 19 days was not reasonable time in which to deliver a Cargo of Shirt by air from the United Kingdom to Nigeria and that failure on the part of the carriers to prove that they taken "an necessary measurers" to avoid the delay can hold them liable. See also Article 19 of the Montren Convention.

57. See Article 18(1) of the Warsaw Convention and that of thettaque protocol both to which have similar wording as well as Article 18(2) Montreal protocol and Article 18(1) Montreal.

58. See Article 18(2) Warsaw Convention and the Hague protocol

the cargo is in charge of the carrier whether in an Airport or on board of aircraft[60].

The period of carriage by air, according to Article 18(3) Montreal Convention "does not extend to any carriage by land, sea or by inland water way, performed outside an airport, if however, such carriage takes place in the performance of a contract for carriage by air for purpose of loading, delivery or shipment, 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, substitute's 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.

Where damage to goods occurred while they are in charge of the carrier, but not at the airport, the carrier is not liable[61]. Also, where damage occurs to goods at the

airport but nor in charge of the carrier, the carrier is not liable.[62] For a carrier therefore to be liable, there has to be cogent proof that the damage to the goods occurred while they were in charge of the carrier at the airport.

c. **LOSS OF LIFE:** No method of transport is absolutely immune from incident leading to death or serious injuries to passengers. Although the prime and

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60. See Swuss Bank V. Brinks Mark (1986) 2 Lioyds Rep. 79.

61. F. Adeyemi, Nigerian Insurance Law, (1998) Dalson Publication Ltd, p. 25

ultimate objective of air transport or air carriage is the safety of the passengers and goods subject matter of air carriage. An accident leading to loss of life, particularly if the accident is attributable to any negligent act on the part of the carrier or its agent can be described as an act of breach of contract of air carriage with respect to safe carriage and landing of the affected passengers. The carriers' liability regarding death or bodily injury or wounding of a passenger, according to Article 17 of the Warsaw Convention, is only established if the accident which caused the damage so sustained took place on board the aircraft or in the course of any operations of embarking or disembarking.

Although, the relevant provision of Warsaw Convention does not define what constitute "bodily injury" it seems that to satisfy this condition, the clamant must satisfy the court that the passenger died or suffered physical injury from the accident thus, psychological disorder, emotional distress or trauma may in the absence of medical evidence as to physical damage to the brain cell or any other part of the body not be sufficient to ground the carrier liable under this provision for bodily injury.

LIABILITY INSURANCE

It has now become inevitable that in the course of daily social interactions, the pursuit of a person's interest is bound to be in conflict with those of others. Such conflicts may give rise to losses or damage in form of bodily injuries, loss of or physical damage to property, financial loss or damage to reputation. The law on liabilities of individuals limits the scope of conduct which can be tolerated by society, hence the legal liability is concerned with the redistribution of losses so that losses are borne by those who caused them[63].

Legal liabilities such as that of an Air carrier to his passengers therefore is insurable in form of third party insurance. Although such a policy is for the benefit of third party, nevertheless the third party cannot generally speaking, directly enforce the contract as a result of the principle of Common law under which a person who is not a privy to a contract can neither sue to assert a right, nor be subjected to any obligation under the contract. A third party therefore is a stranger or an alien to the contract of insurance who cannot enforce the contract by himself even though such a contract was made for his benefit[64]. However, the doctrine of privity of contract according to the supreme court's decision admits a number of exceptions which includes the case of a contract made by an agent on behalf of an undisclosed principal, who again as a general rule is entitled to sue and liable to be sued on such a contract[65]. Though under contract of insurance, a tortfeasor or contracting party may pass to an insurer the damages he is obliged to pay and thereby save himself the financial consequences of his tort or breach of contract. To this end, the Civil Aviation Act 2006 required that "any carrier operating air transport services to, from or within Nigeria, or aerodrome operator, aviation fuel supplier, or any provider of ground handling services, or provider of such other classes of allied services as the

Authority may from time to time determine in writing shall maintain adequate insurance covering its liability under the Act and also its liability towards, compensation for damages that may be sustained by third parties for an amount to be specified in regulations made by the Authority[66].

This requirement of Insurance cover by the air carrier is a condition precedent upon which air operators are required to provide a quarterly report to the Civil Aviation Authority evidencing that such adequate insurance is maintained and that all conditions necessary to create an obligation on the insurer to provide indemnity in the event of a loss have been fulfiled[67].

In the light of the principle of privity of contract, it becomes expedient to examine how an Insurance Company (who is not a party to a contract of air carriage) can be held liable by the passenger in a 3rd party proceeding to enable the passenger lay claim to the Insurance claims put in place by the carrier in possession of the Insurance Company?.

Applying this common law doctrine of privity of contract to Insurance contract, it is patently clear that a 3rd party cannot maintain a claim in law or equity against an insurance company and cannot join such insurance company as a party to any claim against the insured (the air carrier). Although the Supreme[68] appraised the provision of Section 10 of the Motor Vehicles (Third Party) Insurance Act Cap. 126, Laws of the

66. See Article 22(1) & (2) of the Convention for the suppression of unlawful seizure of aircraft embodied as 1st schedule to Civil Aviation Act 2006 where the passengers are to be paid compensations by the carrier for delay or loss of Baggages. Similarly Articles 21(1) of the same convention on the liability of carrier for loss of life or injury nor exading 100,000 speci. Drawing Right to the passenger or his relations.

67. See Sub-Section 3 of Section 74 of the 2006 Act.

Federation of Nigeria 1990 and held that the Insurance Company cannot be sued nor joined in a suit against the carrier, but as a saving ground, the Insurance Company can be sued by a way of 3rd party proceeding based on contact of indemnity.

Another conflicting provision on this point of law is Section 68(1) of the Insurance Act No. 2 of 1997 which provides:-

> *"Where a third party is entitled to claim against an Insured in respect of a risk insured against, he shall have a right to join the Insurer of that risk in an action against the Insured in respect of the claim".*

Notwithstanding this provision, legal practitioners representing third parties are still finding ways of convincing judges of reasons why an Insurance Company can be joined by a third party. Each attempt at joining an Insurance Company by a Plaintiff third party always meet brick wall as Courts often refuse the application on the ground that it was not necessary to join the Insurance Company before the said Insurance Company could be made liable to indemnify the respondent[69]. All that was required, according to the Court, was to give the Insurance Company due Notice of the proceedings as required in the Insurance Policy[70].

Aviation Insurance is essentially connected with carriage of both goods and passengers. The practice of aviation Insurance largely follows the same law as marine, hence the proposal forms are not used for aircraft Insurance, but the detail of risk proposed are entered on a sheet which is passed round the market. Each underwriter takes a share and the leading underwriter negotiates the Insurance and arrive at a decision which is binding on the other participating underwriters.[71]

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69. Ekerebe Vs Efeizomor (1993) 7 NWLR, part 307, page 588.

70. Section 73 (a) of the Insurance Decree 1997 which stipulates that no sum shall be payable by the Insurance Company under the provision of Section 73(1) in respect of any judgment unless before seven days after the commencement of the proceedings in which the judgment was given the Insurer has notice of the proceeding".

The main types of Aviation Insurance are comprehensive cover policy, personal Accident Insurance, Cargo Insurance, Loss of Use Insurance for Aircraft Hulls. Airport Liability and Products Liability Insurance.

The comprehensive Insurance covers accidental damage to aircraft including damage by fire, legal liability for injury or damage to persons or property in the ground and liability to passengers for personal injury or damage to their personal effect. The personal accident Insurance usually covers air crew, pilot, the operator, the air hostess, aircraft doctors and engineers. Passengers make individual arrangements either for a contract for each night or by means of personal accident policies which cover such passenger while on board the aircraft or on the ground[72].

Cargo Insurance covers safety of the goods either on each consignment or series of consignments. This type of Insurance can be effected either under a declaration policy or open cover[73]. The loss of use of Aircraft Insurance covers consequential loss such as loss of revenue where an aircraft is laid off following an accidental damage[74].

The researcher's concern here is comprehensive cover where liability to passengers for personal injury, death, or damage to their personal effect are legally protected and guaranteed which consequently engendered third party claim. The researcher further hold the view that Section 49(2) of the Civil Aviation Act 2006 needs to be

72. For instance in America or United Kingdom, there are slot machines from which tickets for an Insurance are obtainable which gives the passengers the opportunity to obtain cover against fatal accident. No such opportunity in Nigeria, but the Insurance Companies are ready to accept such policy wherever an offer is made.

73. Under an open cover, an Insurer may agree in advance to cover consignments all goods up to an agreed limit per aircraft for specified classes of goods. Under a declaration policy, a fixed sum is insured in advance (say N500,000) and the balance of outstanding cover being reduced by the amount of each goods declared.

read jointly with Section 74(1) of the same Act. The cumulative effect of the two Sections therefore is suggestive of the fact that there is a valid third party's right against Insurers of an accident aircraft in Nigeria particularly when the air carrier involved in the accident fails to comply with the provision of Section 49(2) and other relevant provisions of the Act.

LIMIT OF CARRIERS LIABILITY

Article 22 of the Warsaw Convention permits carries to limit their liability to 250 Francs per Kilo; Gold Francs are converted to Standard Drawing Right's (SDRS) at the rate of 15,075 Gold Francs per SDR which gives a limitation amount in SDR as 16.58 SDR'S per kilogram. SDR's can be converted into any other currency through the International exchange rate. A carrier's liability however may be increased beyond the limits laid down by Article 22, if consignor at the time of delivery of the goods to the carrier makes a declaration of value, and pays the supplementary sum where such is required.

In practice, most Air Carriers required that the declaration must be on the Air waybill or in any other particular form. The declaration envisaged by this provision must be actual declaration not a verbal statement of value made on phone[75].

Where a declaration is made, the Carrier is liable to pay the declared sum unless the carrier can prove that the declared value is greater than the actual value of the goods, in which case the carrier will be liable only for the actual value. It is believed

76. Corocraft vs. Pan America Airways (1969) Q.B 616.

that a carrier may avoid effect of a declaration of value by a properly constructed term limiting the amount a carrier can declare.

With regard to loss of limitation, the Warsaw Convention and Hague Protocol provided that the carrier can lose its rights to limit liability, while the Montreal Convention and Montreal Protocol declared that such right to limit liability cannot be lost simply because the right to limit is absolute and statutory. Article 25 of the Warsaw Convention declared to the extent that a carrier will not rely on the provisions of the Convention which limit or exclude liability if damage caused to goods was as a result of the carriers "Willful misconduct".

Article 25 of the Hague Protocol is to the effect that a carrier will lose its right to limit if it can be proved that damage resulted from an act or omission of the carrier, its servant or agents acting within the course of their employment was done with intent to cause damage, or recklessly and with knowledge that damage would probably result[77].

Onus is always on the passengers not only to prove how the loss or damage occurred but to prove the state of mind of the persons who caused the damage to the extent that the person knew that damage would probably result from the acts. However, and considering the facts that Onus on the Plaintiff is enormous compared with little information within the Plaintiff's disposal, Court resulted to liberal use of

77. Most decided cases where carriers are declared not entitled to limit their liability are cases involving theft such as SWISS Bank Corp. vs. SWISS Air (1988) FC71

inferences in such cases. In the case of Connaught laboratories vs. British Airways[78], the Plaintiff's cargo of vaccines was damaged because it was left on the tarmac rather than being placed in a refrigerated area. The judge noted that this may happen due to mere inadvertence or that a relevant person might have thought that no damage would come to the vaccines if not refrigerated. He also noted that it could have been that the relevant person knew there was a risk or damage but simply did not want to bother storing the Cargo as directed.

The Judge therefore resolved the matter by drawing an adverse inference from the carriers failure to explain exactly how the loss came about. The ratio in this case is to the effect that notwithstanding that the Plaintiff has the burden of proof; the carrier is expected to present before the Courts all available evidences of facts explaining how the loss or damage occurred. Failure to provide such information which is ordinarily within the exclusive disposal of the carrier may result into an adverse inference been drawn against the carrier hence loss of right to limit under the Warsaw Convention and the Hague Protocol.

In event of delay, loss, injury or death in the process of carriage by Air, the Aviation system like any other system provided for the time limit within which an action either civil or criminal can be instituted. There is equally room for pre – action notice which constituted a condition precedent for the commencement of action in Aviation cases.

According to the Warsaw Convention[79] receipt by a person who is entitled to delivery of cargo without any complaint is prima – facie Evidence that the Cargo has been

78. (2002) O.J 3421 quoted in Hadiza Ibrahim Auyo International Carriage of goods by Air Laws and practice. A research project submitted to the post graduate school, Faculty of Law, Bayero University Kano in partial fulfillment of the requirement for the award of Masters in Business and commercial Law, 2005.

delivered in good condition. Article 26(2) of the Convention further provided to the effect that in event of damage, the person entitled to delivery must complain to the Carrier within seven

days after discovery of the damage or from receipt in the case of checked baggage, and Fourteen days from the date of receipt in case of Cargo. In event of delay, such a written complaint must be made within Twenty – One days from the date on which the baggage or Cargo have been placed at his or her disposal.

One may argue that the aforementioned provision only placed the statutory requirement of pre – action Notice on carriage of Cargo, damage or delay in such delivery. One can argue further that carriage of passengers, loss, injuries or delay thereof are not covered by this mandatory provision.

However, the wordings of Article 35 of the Convention are general in nature to contemplate carriage of both passengers and luggages or Cargo. It required a court case to be instituted within a period of two years 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.

Crew members doubled as staff of the airline operators and passengers, one may therefore asked whether they are entitled to be compensated distinctly in the two capacities.

Section 17 (1) of the Civil Aviation Act 3006 specifically required every carrier operating air transport services, from or within Nigeria to maintain adequate insurance covering its liability under the Act and its liability towards compensation for damages that may be sustained by third parties.

ISSUES AND CHALLENGES ON THE LIABILITY OF THE CARRIERS

There is no doubt that challenging issues are inherent in the liability of the carriers which ordinarily brought forth. Various questions needed to be answered one way or the others either by statutes or judicial pronouncement. Among those questions are:

a. Who is liable in an aircraft accident involving a commercial aircraft airliner, the private craft in relation to free and illegal passenger?

b. Who is liable in relation to non-passenger victim on ground?

The question who is liable in relation to a commercial airliner is not contentions and unambiguous as the wordings of section 48(1-3) is unequivocal in relation to the liability of the carriers of the commercial airlines to the extent of the damage sustained in case of death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.[80]

The operative word here is the word "passenger". Who then qualifies to be a passenger? Section, 48, 49 and 71 of the Civil Aviation Act 2006 made copious references to the word passenger which ordinarily is expected to be defined under section 78 of the Act. However, Section 78 which is the definition section of the Act patently omitted the definition of who is a passengers.[81]

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80. Article 17, modifications to the convention for the unification of certain Rules Relating to International Carriage by Air, third schedule to the Civil Aviation Act 2006. See also the case of Harka Air Services Ltd Vs. Keazor (2011) 13, NWLR, pt. 1261 at p320.

81. A passenger therefore is defined as one a traveler riding in a vehicle, a boat, or bus or car, or plane or train etc who is not operating it.

It is therefore imperative to note that one must be a passenger to quality to benefit from the liability of an air carrier as a result of injuries sustained in an aircraft accident.[82] It is at this juncture, the liability of passengers in a private airline, state airline and non – ticketed passengers.

From further elucidation, there is need to consider position of air ticket and airway Bill in relation to passengers and carriers liability in an aircraft accident. Article 3(1-4) of the modification to the convention of certain rules relating to international carriage by Air required every passenger in an aircraft to deliver a document of carriage which shall contain among others indication of this place of departure and destination. This carriage is expected to be delivered to the passengers by the carrier in any form or manner as may be prescribed by the carrier.[83]

Article 4 of the same law provided for airway Bill which is a record of the carriage to be performed and particulars of the carriage, parties and the cargo. The airway Bill is expected to contain indication of the places of departure and destination, in dictation of the weight of the consignment etc.[84]

The imperative of the issuance of the passenger ticket and the airway Bill receipt to the passenger as cumulatively provided in Articles 3 & 4 of the war saw convention

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82. See Articles 20 & 21, Unification of certain Rules relating to international carriage by air (Montreal Convention 1999), 2nd schedule to the Civil Aviation Act 2006.

83. See Article 3 modification to the convention for the unification of certain rules relating to international carriage by air, theird schedule to the Civil Aviation Act 2006.

required an air passenger to procure and obtain an air ticket or an airway Bill from the carrier to qualify them as legal passengers for the purpose of being paid compensation by the carrier or for the purpose of making the carrier liable for loss, damage and death affecting them in the course of the carriage.

To this end, it now becomes pertinent to determine the passenger ship of passengers in a private aircraft and those in a state aircraft who are not paid passenger and do not have passenger tickets or air way Bill to establish the legality of their passenger ship. It is equally not yet clear whether one must be a legally ticketed passenger in an aircraft before he can enjoy the compensation regimes in the aviation disaster.

In examining the above stated exposition, one needs to examine the relevant provisions of the Civil Aviation Act 2006 and juxtapose them with the relevant provisions of the international laws which were contained in schedule one, two and three of the Act.

The wordings of section 48(1-3) of the Civil Aviation Act 2006 seems general and all encompassing and required ordinary meaning and interpretation because there is not ambiguity inherent therein.[85] The liability regime in this section is general in form and nature to accommodate all passengers whether of commercial aircrafts, private aircraft and even state air crafts. However, it is apt to point out differences and contradictions between the provisions of section 48 (1-3) of the 2006 Act and Article

85. Associated Discount House Ltd Vs. Amalgamated Trustees Ltd. (2007) 10 MJSC, p81-82 where the apex court was of the view that where the words in a statute are clear and unambiguous, there is nothing for the court to interpreted than to give the words their ordinary meaning.

3 & 4 of the international convention on modification to the convention for the unification of certain rules relating to international carriage by Air. While section 48 generalizes the qualification of passengers, article 3 & 4 of the convention provided for Air ticket and Airway Bill as a qualification and condition precedent for passenger ship.

To settle this contradiction, one can safely argue that the provisions of the convention for the unification of certain rules relating to international carriage by Air having been ratified and domesticated by the National assemblies and enacted as part and parcel of the Civil Aviation Act 2006 as schedule two[86] remained a National legislation that cannot be distinguished from other provisions of the 2006 Act. Accordingly, there seems no ambiguity to warrant a likely supremacy between the two laws.

LIABILITY IN THE STATE AIRCRAFT AND GRATUITOUS AIR CARRIAGE

It is not uncommon in Nigeria to have unpaid passengers in an aircraft who ordinarily may not procure nor obtain any air ticket to sustain there status as passengers in the aircraft. A look at Article 3 & 4 of the third schedule to the Civil Aviation Act seem suggestive that those class of people are not beneficiaries of the compensation scheme provided in the Act.

However, Article 1 (1) of the 3rd schedule to the Act is unequivocal to the extent that the convention applies to all carriage of persons, baggage or cargo performed by aircraft within Nigeria as well as gratuitous carriage by aircraft undertaking. The word undertaking used in Article 1 (1) of the 3rd schedule to the 2006 Act though not defined by the Act, was defined by the Black's Law Dictionary as a promise, pledge or engagement.

86. Section 42 (1) of the constitution of the Federal Republic of Nigeria 1999 as amended.

Going by the Black's Law definition of the word "undertaking" it is arguable that a gratuitous passenger must be a passenger officially known to the carrier with an understanding that the carriage was purely free or with a promise from the passenger that he pays for the carriage at a later date.

Accordingly, an illegal gratuitous passenger who did not have an undertaking with the carrier in any manner may not be a beneficiary of this provision.

LIABILITIES TO NON-PASSENGERS VICTIMS OF THE AIRCRAFT ACCIDENT

It is common and most likely that when aircraft crashes, it mostly fall on the ground in the course of which the properties upon which it felt suffers irreparable damage and the non-passengers living being upon whom the falling aircraft felt mostly lost their lives and how would the owners of such damaged properties and families of those whose lives were lost on the ground resultant of the crash be compensated? Is it though the compensation regimes inherent in the air carriage or under the common law principles?

The provision of section 49 (8)[87] only created a liability regime which is rather there, the compensation regimes as was provided under section 48 for the passengers on board of an aircraft. The liability regime provided under section 49(1) further confirm the cause of action which is ordinarily available in tort in favour of the non-passenger victims of the accident under the common law principles.

87. Bryern A. Garner, Black Law Dictionary Ninth Edition, p. 1665

The liability of the carrier to the non-passenger victims on ground though is not ascertainable but according to the ordinary meaning of section 49(1), it is strict as damages there from is recoverable without proof of negligence or intention or any other cause of actions as if the loss, injury or damage had been caused by the willful act, neglect or default the owner of the aircraft.[88]

It is therefore inferable that the common law principle of tortuous liability vis-à-vis the duty of care own to a pedestrian and the property owners on the ground that was adopted by the provision of section 49 (2) under the principles, the affected victims on the ground will have to approach a court of law to establish the liability of the carrier and the court of law will have to determine the quantum of damages payable and recoverable by the victims putting in to consideration several factors which includes values of the properties so damaged, personality of the dead victims in the society, the responsibilities and the dependants, the liability herein favour of the non-passenger victims on the ground as distinguishable from the compensation regimes provided for the passengers under Section 48 of the Act.[89]

88. Section 49 (2) Civil Aviation Act 2006.

CHAPTER FOUR

4.1 INTRODUCTION

This Chapter examines concept of compensation in its general term and as it relates to victims of aircraft accident. Since compensation is considered as a means of placing an injured party in the same situation he would have been if the incident leading to the claim and award of compensation did not arise at all. This chapter will fashion out who is entitle to compensation as a result of aircraft accident vis-à-vis the passenger victims, ground victims and the crew.

Assessment of the quantum of compensation is an important area to be examined here in relation to a dead victims, those who sustain fatal and non –fatal injuries, those who lost their property, businesses and those who as a result of the accident undergone psychological trauma, with the view of determining whether the regime is adequate or not and the impact of untimely payment of commensation.

4.2 WHAT IS COMPENSATION?

Compensation can be described as indemnification, payment of damages, making amends; that which is necessary to restore an injured party to his former position. It is an act which a court orders to be done,[1] or money which a court orders to be paid by a person whose acts or omissions, have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury.[2]

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1. Black's Law Dictionary 9th Edition, Bryan A. Garner, 2009.

2. The word compensation is universal in nature and has a wider interpretation which is fit and applicable in various spheres of human endeavour. For example, the word compensation fits in to compensation in relation to Nationalization of foreign investment etc. The Nigerian constitution, under section 44 (1) (a & b) (as amended)[3] required payment of prompt compensation to any body whose interest in a moveable or immoveable property is compulsorily acquired by the Government or any agency of Government.

One can therefore argue that, life, health and well being of a passenger who is a victim of an aircraft accident can fit in within the confine of the properties referred to by the Constitution to entitle such victim to be compensated promptly and adequately. Paragraph b of section 44 (1) of the Constitution vested a legal right on such a person claiming compensation, a right of access to a court of law for the purpose of determination of his interest so affected and what he thinks is payable to him as compensation.

It is therefore arguable that the word, doctrine of compensation is a constitutional right which any individual or corporate entity who has a genuine claim thereto can assert, pursue and accordingly be awarded by a competent court of law as was held by the Supreme court that any law which acquires another person's interest, such law must provide for the payment of adequate compensation therefore to him[4].

It suffices to state that Section 48 (1) (2) and (3) and the Civil Aviation Act[5] did not define what is compensation. In the same vein, Section 78 (2) specifically stated

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3. 1999 Constitution, Federal Republic of Nigeria (as amended)

4. Attorney of Bendel State Vs. PLA Aideyan (1989) 4, NWLR, (par 118), p. 646 at p667.

that all other terms not specifically defined shall have the meaning ascribed to them in the Chicago convention. A close scrutiny of the Chicago convention further revealed no definitive posting of the term Compensation. Consequently, the term can be ascribed its ordinary literal and unambiguous meaning, as posited by the Apex Court in the case of Federal Republic of Nigeria Vs. Osahon[6].

4.3 WHO IS ENTITLED TO COMPENSATION IN AN AIRCRAFT ACCIDENT

Compensation or damages is not paid as a matter of course. There has to be a breach of somebody's right either in contract or in tort and in an attempt to pacify the party so injured

and making him to feel as if no injury was caused to him or in an attempt to cushion the effect of the injury so caused to him, the concept of compensation comes in to fore.

In the sphere of damage caused as a result of aircraft accidents which result in to payment of compensation, it is not out of context, to ask the question who is entitled to be compensated?. Is it the passenger who is injured, the family of a passenger who lost his life in the accident and, or a non-passenger who lost his property or suffered injuries as a result of the crash.

4.4 PASSENGER VICTIMS

A passenger, is a traveler on a public or private conveyance other than the driver, pilot or crew. A driver is a member of a team or group who does far less effective work than the other members[7]. A passenger does no or less work in a car, bus, train or plane compare with the driver, crew and the pilot.

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6. (2006), KJSC, p1, at p12 – 15
7. Chambers 21st Century Dictionary (1999 Ed. P417)

It is assumed there is either direct or implied contract of carriage either between the driver or pilot who offers to carry his passenger and the passenger who agrees to be conveyed, carried or airlifted by the driver or pilot, hence the contractual relationship of carriage by air or a motor vehicle. Accordingly, a passenger who involved in an accident may file an injury claim either under the liability insurance coverage of the driver or owner of the car involved in the accident or under the coverage of the driver or owner of the other vehicle which caused the accident. He cannot collect from the two drivers or owners. If however one driver or owner does not have enough insurance to cover the total damages of a passenger, the passenger can make up the rest against the other. The passenger's claim is strict whether any of the driver or owner is at fault or not, the important factor for consideration is that the passenger is not at fault.[8]

For the purpose of aircraft accident therefore, a person only qualifies as a passenger when he boarded the aircraft, must have been wounded or suffered bodily injury, the injury must have arisen from an accident and the accident must have occurred on board the aircraft or during the course of embarking or disembarking from an aircraft.[9]

It worths mentioning that the carrier is obligated to deliver a ticket to the passenger and the ticket is expected to contain the following particulars:-

a. The place and date of issue.

b. The place of departure and destination.

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8. (2009) Journal of Contemporary Legal Issues, volume 1, No.1, 2009, p.140-146

9. Uwarkwe C E, Introduction to the Aviation Law in Nigeria, (2006), Aviation Publishing and Consultancy Co. Ltd, p.148. See also Article 17 of the Warsaw Convention

c. The agreed stopping places, provided that the carrier may reserve the right to alter the sopping places, in event of necessity.

d. The name and address of carrier or carriers.

e. A statement that the carrier is subject to the rules relating to liability established by the convention.[10]

However, a passenger who has no ticket, or who has an irregular ticket or who has lost his ticket and boarded an aircraft is equally a passenger for the purpose of been entitled to payment of compensation. Thus, if a carrier accepts a passenger without a passenger ticket having been delivered, the carrier shall not be entitled to avail itself of provisions of the convention that excludes or limit its liability.[11]

In some jurisdictions, the delivery of the ticket to the passenger is now considered mandatory to enable him to take adequate notice of the liability limitation. In the United State of American for instance, the court of appeal in the case of Mertens Vs Flying Tiger line[12] held

that ticket should be delivered to the passenger in such a manner as to afford himself against the limitation of liability and that such protecting, measures could include the decision to take the flight, entering into a special contract with the carrier, or taking out additional insurance for the flight.

A passenger in an aircraft who doubles as a victim of an aircraft accident is entitled to compensation as a statutory right and as a contractual party under the common law principle of privity of contract.[13] The cumulative effect of sections 48, 49 and 71

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10. Article 3 of the Warsaw Convention. See also the case of Oshevire Vs. British Airways (1990) 7 NWLR, part 163, p512.

11. Article 3 (2) of the Warsaw Convention.

12. US Court of appeals (2nd Air) February 16, 1965, Avi, Vol. 9, p 17, 475.

(1) of the Civil Aviation Act 2006 entitles a passenger to be compensated for injury, damage and loss of life. The claim and the passenger's entitlement to compensation was strengthened by section 48 (3) where in case of aircraft accident resulting in death or injury of passengers, the carriers shall make advance payments of at least £30,000 US Dollars within 30 days from the date of such accident to the natural person or such other persons who are entitles to claim compensation in order to meet the immediate economic needs of such person.

4.5 GROUND VICTIMS

A victim is a person who is harmed or killed by another, a person who suffers from a destructive or injurious action or agency, a person harmed, injured or killed as a result of a crime, accident or other event or action. He is also a person who has come to feel helpless and passive in the face of a misfortune or ill treatment.[14]

It is common that when an air craft accident occurs, the air plane or any object there from may likely fall on somebody or on some property on the ground causing damage on such persons or properties on the ground. The fact strictly remains that there is no common law of

privity of contract between the aircraft owner and a person or owners of properties on ground to warrant breach of contract which can press home the claim of contractual compensation. However, it is not certain that the pilot of an aircraft owes a duty of care to person on ground and their properties even notwithstanding the statement of the Lord Denning to the effect that it is not every consequence of a wrongful act, which is the subject of compensation, and that

the law has to draw a line somewhere in such a way that, some time it is done by limiting the range of persons to whom duty is owed, or by saying that there is a break on the chain of causation, or that the consequence is too remote to be head of damage.[15]

It is a question of law whether or not in the particular circumstance of a case under consideration, a duty of care exists, and unless such a duty can be established an action in negligence must fail.[16]

Lord Artkin in the famous authority of Donoghue Vs. Stevenson,[17] was so categorical to the effect that in English law, there must be a general conception of relations giving rise to a duty of care, of which a particular case can rest upon and that judges must be cautious in making use of the general conception as same is too wide in some instances to fit in some cases. Consequently, courts have now evolved signposts or guidelines or relevant considerations involving such notions as neighbours, control, foresight, proximity, opportunity for intermediate examination, deeds or words, the degree and kind of risk to be guarded against.[18]

However, section 49(2) of the Civil Aviation Act frankly created a cause of action in tort of negligence in favour of any person who sustains injuries or owners of damaged properties against the owners or operators of the aircraft. The cause of action so created herein attracts payment of compensation to the affected persons.

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15. Compania financier soleada S.A vs. Hamburg Tanker Corporation Inc. (1981) 1 WLR, p274 at p281.

16. See per Lord kinnear in Blck Vs. Fife Coal Co. Ltd (1912) AC, 149, at 159

17. (1932) AC, p562 at 579

There is doubt and uncertainty as to whether a person who losses his life as a result of an article falling over him from an aircraft can enjoy the same quantum of damages of One Hundred Thousand SDRS as it is payable to a passenger whose life is lost in the same aircraft accident. This question is palpable owing to the fact that no amount of compensation payable to loss of life of ground victim is categorically stated in the Act.

Ordinary or literal meaning of Section 49 (2) reveals that a court of law would have to wage in to determine whether in actual fact the life is loss, whether such loss of life occurred as a result of an article which felt from the aircraft who is liable and the quantum of compensation payable to the person whose life was lost.

There is therefore no doubt that a ground victim of an aircraft accident is known to law and entitled to be compensated for the loss, injury or damage suffered from the accident. What is left uncatered for by the law is the quantum of compensation payable to such victim and the yardstick to be considered in determining such quantum.

4.6 CREW MEMBER

It is interesting to note that Section 78 of the Civil Aviation Act 2006, dealing with definitions of terms did not define who a crew member is? Thus, a crew member is a member of a group of people who work together especially in a ship.[19]

The Chicago Convention 1944 which is the locus classique in the field of civil aviation and set the tone and frame work for the economic, safety and security regulation of

19. Black Law Dictionary 6th Edition, P209

international civil aviation, made provision for who are the crew members in an aircraft under Annex I which contains standards and recommended practices for the licensing of flight and

ground crew necessary for the safe operation of an aircraft. These personnel accordingly includes Pilots, Flight / Airworthiness Engineers, Air traffic controller, flight dispatchers and maintenance technicians. This simply implies that crew members, are members of staff working jointly and severally in an aircraft for the purpose of its operations and safety system. These classes of people are statutory or contractual staff of the company which owns or operating the aircraft. As a consequence therefore, they have a working arrangement which is guided by a particular terms and conditions, enforceable by them and against their employers.

It is equally important to examine Section 48 of the Act to see what the provision of Article 17 (1) of the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague convention) 1970 is, to the effect that a 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 the aircraft. This provision and the general definition of a passenger being a traveler on a public or private conveyance other than the driver, bring the crew members within the confine of passengers who are entitled to be compensated by the carrier in consonance with the provisions of Section 48 & 49 of the Act.

Consequently, crew members whether staff of the carrier or any airline operator have the status of passengers for the purpose of being compensated for loss, or injuries sustained as a result of an aircraft accident.

4.7 ASSESSMENT OF THE QUANTUM OF COMPENSATION

Claims for compensation are usually settled through three main ways i.e. by way of negotiation, by arbitration and by litigation. In any of the three instances, the quantum of compensation is determined by an assessment of the affected person or property with a view

to arrive at what is reasonably justifiable as a basis for discussions and subsequent agreement on what is payable as compensation.[20]

After assessment the next stage is the coming together of the parties or their representatives with a view to reaching a compromise. Negotiating compensation may be long drawn where Victims team so affected is large in numbers and became difficult to speak in one voice. Negotiation also breaks down where the victims claim or demand is unreasonable or outrageous, or where the tortfeasors offer an unreasonable and unacceptable quantum of compensation.[21] It is a common practice that where no offer of compensation is made, Victims or their relations take the initiative and ask for compensation using the services of legal practitioners.

The processes of negotiating for compensation usually lead to arbitration on whether compensation is payable and the quantum of such payment. It is the failure of negotiation which usually leads to litigation.

Litigation therefore is the aftermath of the breakdown of negotiation and arbitration. It is considered expensive and technical as the court would have to put several factors in to consideration to determine whether or not a person or a victim is entitled to compensation and which scale to apply in arriving at what is reasonable and justifiably payable.

20. Adewale O. O. Sijuade Compensation Claims in Nigeria Principles, Guide lines and Criteria (1999) Journal of African Law, Vol. 33, No.1 at pg1 – 92.

4.8 DEAD VICTIM

A dead victim is no more a legal entity that can sue and be sued. His estate however can step in on its behalf for the purpose of being compensated. Thus, a dead victim in an aircraft accident has a strict, definite and minimum quantum of compensation in his favour provided for him to the benefit of his Estate in accordance with Sections 48 (1, 2 & 3) of the Civil Aviation Act 2006 and Article 17 of the 1st Schedule to the Act.

This compensation is strict as the liability which engendered the compensation is equally strict. Consequently, a dead victim is entitled to the sum of N100,000 Special Drawing Rights and the carrier according to Article 21(1) of the first schedule to the Act cannot exclude itself from the liability. However, the carrier shall not be liable for damages arising from an accident resulting in the death of a passenger if such passenger claims beyond the N100,000 Special Drawing Rights and the carrier can prove that such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents, or such damage was solely due to the negligence or other wrongful act or omission of a third party.[22] The implication of Article 21 (2) (a-b) of the 1st schedule to the Act therefore is that a carrier who lost his life in an aircraft accident can successfully claim beyond the 100,000 Special Drawing Rights if he is able to prove that the accident which claimed his life occurred

as a result of a negligent act, an omission or a wrongful act of the carrier or any of its agents. The proof herein is a proof on the preponderance of evidence as it is applicable in every civil case before a court of law and in consonance with Section 137 of the Evidence Act 2011.[23]

22. See article 21(2) (a&b), Hague convention 1970 1st Schedule to the Civil Aviation Act 2006.

4.9 FATAL INJURY/NON-FATAL INJURY

Fatal injury means any injury that result in death within thirty (30) days of the accident. It is an occurrence associated with the operation of an aircraft where, as a result of the operation of an aircraft, any person (either inside or outside the aircraft) receives fatal or serious injury or any aircraft receives substantial damage.[24] It is a serous bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.[25] it is equally an injury for which a person is detained in hospital as an in-patient, injury or any of the following injuries whether or not they are detained in hospital; fractures, concussion, internal injuries, crushing, burns (excluding friction burns), severe cuts,

severe general shock requiring medical treatment and injuries causing death 30 days or more days after the accident. An injury is non-fatal when the injury sustained is not too serious as to cause a permanent deformity on the victim.

Assessment of compensation payable to victim of both fatal and non-fatal injuries is always done by a way of negotiation between the victim and air carrier that caused the accident which resulted in to the injury. Quantum of such assessment can also be arrived at through Arbitration wherein both parties are ably represented. Litigation is resulted in to when both the negotiations and arbitration failed.

23. See the case of …

24. Definition of Key terms used by Air Safe. Com. www. Airsafe.com.levent/define.htm.. 30-11-14

It is pertinent to note that injuries are not classified in to fatal or non-fatal by the Civil Aviation Act. What is known to the Act is that there is an injury sustained from an accident which occurred on board the aircraft. It is therefore the duty of the plaintiff victim to ascertain that the injury sustained by him is a fatal or non-fatal injury and to lead credible evidence to sway the mind of the court to so believe in order to justify his monetary claims commensurate with the injuries.

An injury, whether fatal or non fatal, once proved to be sustained by a person, such a person is entitled to be compensated. The classification only becomes of importance when a court of law is to determine the quantum of compensation to be awarded in a particular case[26].

It is in general, that pecumary compensation which the law awards to a person for the injury he has sustained by reason of the act or default of another whether that act or default is a breach of contract or tort[27]. Where the claim of the plaintiff is premised on damages, it is the duty of the court to assess damages even if the decision of that court goes against the plaintiff. However, where the trial court fails to assess the damages, any appellate court in its general powers conferred by its enabling laws which created such court, is in a position to assess the damages[28].

In the case of R. O. Iyere Vs. Bendel Feed & Flour Ltd[29], the Plaintiff, while working for the defendant company's feed and flour mill at Ewu, had his right upper hand caught in the defendant's running machine in a circumstances entitling the Plaintiff to call in aid the maxim of *res ipsa locuitur* in establishing the claim of negligence against the defendant.

The Supreme Court in assessing the quantum of damages accruable to the plaintiff was of the opinion that the loss of the upper right hand of the plaintiff indeed renders him to become a disabled person, which no amount of compensation will restore him back to normalcy. Accordingly, there is in law, no specific and fixed quantum of evidence that must be adduced in support as the evidence of physical disability arising from the damage is a sufficient proof[30].

The implication of this decision on the victim of an aircraft accident is that, once he can establish that the bodily injury, whether fatal or non-fatal was sustained as a result of boarding an aircraft or in the course of embarking or disembarking the aircraft, the application of the maxim of *res ipsa locuitor* shall avail him and entitles him to be compensated accordingly.

It is trite that a person injured by another person wrongful act is entitled to general damages for non-pecuniary loss such as pain, suffering and loss of amenity and enjoyment of life. Further in the assessment of damages, one classification distinguishes pecuniary loss from non-pecuniary loss. Another classification is between special damages and general damages. Special damages, according to Salmond[31], can be defined as those pecuniary loss actually suffered up to the date of the trial i.e. loss of earnings. General damages on the other hand are those other

26. See the case of Shell Petroleum Development Company (Nig.) Ltd VS. Teibo & Ors (1996) 4, NWLR, (part 445), p157 at 680.

27. Umuje & 1 Or Vs. Shell Petroleum Development Company of Nig. (1975) 9 – 11, SC. p155 at 162.

30. See United Bank Ltd Vs. Achoro (1990) 6, NWLR, (pt156), p254 at 282 – 283.

31. Salmond on Torts, 16th Ed, Sweet & Maxwell, London, Chap23, p575 at 585.

heads of loss i.e. pain and suffering. The requirement of the law is that where the damage is based on special damages, it must be pleaded arithmetically and must be proved accordingly[32].

On the head of pecuniary loss, the principle of law which relates to it is that of "Restitution in integrum" – so far as actual or prospective pecuniary loss is concern, the amount of compensation can be assessed with a degree of accuracy which will go towards putting the injured person in the same position as he would have been had he not sustained the wrong. On the principle relating to non – pecuniary loss, it is that of fair and reasonable compensation. Money certainly cannot renew a shattered human frame. However, monetary compensation can be awarded so that the court must do the best it can in the light of the circumstance of each case as the object of the award of damages is to compensate the plaintiff fairly and adequately but not necessarily punishing the defendant[33].

It is the law that general damages if awarded for the pairs and suffering plaintiff has undergone in the past and is likely to undergo in future. This may include a substantial sum for the mental agony due to the fact that his life has been shortened. Court may also award substantial damages for loss of amenity or loss of faculty[34]. However, all these damages can only be fair and adequate compensation as no sum could be perfect compensation for a grave injury. Thus, every thing must depend upon circumstances of the particular victim (plaintiff). For instance, a young and active man who has been blinded or crippled might recover substantial damages under this head as the "joy of life" will have gone from him as he cannot ride a bicycle, cannot kick a foot ball.

32. A.G. Leventis (Nig) Plc Vs. Akpu (2007) 17 NWLR (pt. 1663) 418 and Nwobosi Vs. ACB Ltd (1995) 6 NWLR (pt. 404) p 658.

33. MC Gregor, "Compensation Verses Punishment in Damages Awards" (1965) 28 MLR, p629.

The aforementioned principles of law, according to Ibrahim Tanko Mohammed J.S.C in his lead judgment in the case of Iyere Vs. B.F. & FM Ltd supra at p140 influenced by the opinion

of field, J in addressing the jury on what to consider in respect of a victim in the case of Philops Vs. London and South Western Railway[35], where he observes:-

> *"There is another matter, which has been discussed a good deal, and it is one of consideration difficulty, VIZ: how far you are to take account the plaintiff's position. In the case of a poor man, who lost his leg or arm, by which he earned his living you would probably in considering what sum you would give his take into account that he was deprived of the power of earning a livelihood. On the other hand, my Brother Ballantine asks you to take into account that the plaintiff and his wife are in receipt of an income of something like N3,500 a year, so that he will be above all wants, and will be able to live comfortably and with all the reasonable enjoyment of life. Must confess for myself, I have very great difficulty in seeing how you can say that because a person who is injured is very well off, therefore, a person who injures him is not to pay reasonable or proper compensation. The damages to which a man is entitled are the consequences of a wrongful act by which he suffers. The consequences of a wronglful act here are undoubtedly that Dr. Philips has been likely to carn if this accident had not happened. That has been taken from him, and I am at a loss to see how the fact that he enjoys considerable income from other sources can alter the amount which you ought to give him".*

Consequently, the expression "loss of amenities of life" which is exemplified in the physical disability of the victim is hardly quantifiable in terms of money. This is generally because, apart from the fact that every person is entitled to enjoy the amenities of life, the natural and ordinary activity and age of the plaintiff, may

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35. Philops Vs. London and South Western Railway (1979) 4 Q.B.D. p466.

determine the nature of the deprivation suffered by the physical injury. The value depends on the assessment of the trial judge based on the evidence, guided by awards made in respect of earlier similar disabilities[36].

Thus, in personal injury cases, once there is evidence of injury, pains and / or permanent incapacitation, the victim or plaintiff is entitled to be awarded reasonable amount as general damages. Such an award should be based on some circumstances since the injury cannot be quantified in monetary terms. In making such award therefore, the court could be swayed in considering the following factors:

a. The Bodily pain, that is, whether the pains will be permanent so that the plaintiff will be with for life.

b. Status of the injured person, his occupation, profession or calling.

c. Whether the injury is permanent or transient.

d. Loss of earnings caused by the disability.

e. Length of time spent in receiving treatment before the wound healed.

f. Loss of amenities of life.

g. Age and expectations of life[37].

In awarding damages of this nature, the court is to simply be guided by the opinion and judgment of a reasonable man, as the general damages are losses which flow naturally from the defendant's acts and its quantum therefore needs no strict or arithmetic proof because, it is naturally presumed by law.[38]

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36. Martin Usong Vs. Hanseatic International Ltd. (2009) 5 MJSC, (pt 11), p40 at 46.

37. Garba Vs. Kur (2003) 11, NWLR, (pt.831) p280.1 Eseigbe Vs. Agbolo (1993) 9, NWLR, pt.3156, p128 quoted in, Basil Momodu, Court-Room Rapid Reference Hand Book, 2014, Evergreen Overseas Publications Limited, Benin City, Nigeria, at p129 – 130.

4.10 LOSS OF PROPERTIES

The purpose of an award of damages is to compensate the plaintiff (Victim) for the sustained damage, injury or loss so suffered. Accordingly, where a court of law is called upon to assess that a party which has been damnified by the act which is in issue must be in the position in which he would have been if he had not suffered the damage for which is in issue must be out in the position he is being compensated.[39]

When a property is damaged or destroyed, the question of assessment of damages as regards what should be the proper value on which to base the cost of replacement of a destroyed

piece of property on the one hand, and the repair of the damaged on the other hand are issues to be determined by the court.[40]

Thus, where there is a claim for total destruction of property the measure of damage will be the value of the property at the time of the destruction subject to the principle of restoring the plaintiff as far as it is possible to put him in the position he was before the injury. Computation of damages is not however uniform, it varies between total loss calling for replacement of a damaged property and repairs of the damaged property. While replacement is static, repairs are subject to varies of unpredictable market forces. Cost of repairs not to be unjust to the one who suffered legal injury cannot be confined to the time when the damage occurred. For this reason, assessment of damage must take into consideration the current market situation as the court must take in to account the economic strength or decline of the Naira, and its purchasing power.[41]

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39. Abubakar Steel Industries Limited Vs. Dantata & Sawoe Or Vs. Raymond Ekwenem. (2009) 7 MJSC, (part 1) p122 at p142

40. Shell petroleum Development Company ltd Vs. Ambah (1990) 2 SCNJ, pg. 152 at p164

4.11 PSYCHOLOGICAL OR EMOTIONAL DISTRESS

English law and common understanding have moved some distance since recognition was given to this symptom as a basis for liability. Whatever is known about the mind-body relationship is now accepted by medical science that recognizable and severe physical damage to the human body and system may be caused by the impact, through the senses, of external events on the mind.[42] It is a general term that is used to describe unpleasant feelings or emotions, that impact ones level of functioning. It is psychological discomfort that interferes with daily activities which is capable of resulting into negative views of the environment, anxiety, distractions and symptoms of mental illness.

A psychological distress can be caused by traumatic experiences, such as the death of a loved one; it can also be seen as a maladaptive response to a stressful situation which usually occurs when external events or stressors place demands upon a person that the person is unable to cope with.

Once a person is engulfed in a psychological taruma, the following symptoms are likely to be jointly or severally inherent in the person.

a. Weight gain

b. Anger Management Problem

c. Obsessive thought or compulsions

d. Physical symptoms not explained by a medical condition.

e. Decreased pleasure in sexual

f. Hallucinations

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42. Charlesworth on Negligence (1977), 6th Ed, p148 – 155

g. Delusion.

h. Reckless acts i.e excessive shopping sprees.

i. Belief that others can hear your thought.

j. Strange or unusual behaviours i.e wearing your clothing backwards.[43]

Consequently, just as mental illness can influence all aspects of somebody's life, psychological distress can interfere with some one's work performance.

There may thus be produced what is identifiable an illness as any that may be caused by not direct physical impact, but that was felt through the senses, of external events of the mind.

This situation is akin and similar to a situation where the plaintiff is merely startled or frightened and, in that sense "Shocked" momentarily and thereby reacts in such a way that he does something which results in his sustaining injury.[44]

Because "nervous shock", in its very nature, is capable of affecting so wide range of people, there remains a real need for the law to place some limitation upon the extent of admissible claim. Consequently, three elements are inherently identifiable in respect of the claim, namely:

a. The class of persons, whose claims ought to be recognized;

b. The proximity of such persons to the accident;

c. The means, by which the "nervous shock" was caused.[45]

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43. D.A Glass & C Chastimore, 1989, Introduction to the Law of Carriage of Goods, Sweet & Maxwell, London, p420

44. Slatter Vs. British Railway Board (1966), K.I.R, P336, where a shunter, who knew that the plaintiff was examining a line of wagons in the shunting yards failed to prevent some wagons striking one end of the line with such unnecessary force that the impact produced an exceptionally load bang. This caught the fo by surprise and startled him that he jumped, stripped and fell, injured himself. The defendants were held to be liable for their shunting negligence

As regards the class of persons, the possible range of people lies between the ordinary bystander and the closest of family ties that is either parent and child or husband and wife. The claims of the latter are recognized by the existing law. On the other hand, the former is not so recognized, because either such a person must be assumed to be possessed of fortitude, which is sufficient to enable him to withstand the calamities of or modern life. Those cases which involve less close relationships, will require very careful scrutiny but the closer the tie, in scare and not just in relationship, the greater the claim for compensation.

As regards proximity to the accident, obviously this must be close in both time and space, because, for the plaintiff's claim to succeed, a causal connection between the shock resulting in to psychological distress and the defendant's negligence has to be proved.

Considering the afore stated definitions, and the surrounding indices of the psychological distress earlier discussed, coupled with the operative words of Sections 48 and 49 of the Civil Aviation Act 2006, (which is "injury"), one can infer that psychological or emotional distress can conveniently be classified as a form of injury, though not physical abinitio but capable of leading to internally body discomforts and in some instances leading to physical discomfort which is transformable in to physical injury.

The under listed inference can be drawn from the general overview of how emotional stress or nervous shock can be compensated:-

a. Whilst damages cannot at common law, be awarded for grief and sorrow, a claim for damages for "nervous shock" which was occasioned by the defendant's negligence, can properly be brought without the necessity of showing direct impact with the plaintiff, if there were reasonable fear of immediate physical injury to him.[46]

b. Reasonable fear of immediate physical injury to the plaintifff's family or his friend or doubtfully, to third persons resulting in nervous shock being suffered is actionable in the like circumstances of the defendant's negligence.

c. The plaintiff's sight of an accident or the happening of an accident within his hear shot or his witnessing the immediate aftermath of an accident which has coursed physical injury to the plaintiff family or to his friend or even to third person whereby he suffers a nervous is actionable like circumstances of the defendant's negligence.

d. The sight of physical injury caused otherwise than to a human being, e.g. to a corpse, to an animal or to property, resulting in a shock is not actionable.

e. A report by a third party, e.g. such as contained in a news paper that physical injury to a member of the plaintiff's family has been caused by the defendant's negligence, resulting in a shock, is not actionable, unless such intervening act by the 3rd party was reasonable in the circumstances or to be expected.[47]

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46. Bourhill Vs. Young (1943) A. C. p92 at p103 and Duliev Vs. White (1901)2 K. B. p669.

47. Charlesworth & Percy on Negligence, (1983) London & Maxwell, Eleventh Edition, p43 – 43

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CHAPTER TWO

NATURE OF AVIATION

The words "Air Law", "Aeronautical Law", "Air Transport Law" and or "Civil Aviation Law" refer to the same thing in the legal parlance. Thus, "Air Law" can be described as a body of rules governing the use of airspace and its benefits for aviation, the general public and the nation of the world.[1]

The International Civil Aviation is governed by International Conventions hence was defined by the International Civil Aviation Organization (ICAO)[2] as "a body of principles and rules of public, private, national or international Law which govern the legal relation arising from the civilian use of Air transport activities". According to Shaw Cross and Beaumont[3], Air Law can be defined as a combination of public and private international Law, whose purpose is to provide a system of international regulation of international civil aviation and to eliminate conflicts or inconsistencies in municipal Air Laws.

The study of law relating to air transport is important as there is need to ascertain the standard, terms and conditions under which mails, passengers and cargo are transported. The law therefore intervenes to set the standards and rules and enforceability to be accepted internationally hence the standard and recommended practices. The law equally sets

parameters for air carrier operators, their liability for damages arising from their operations and compliance with laws rules and regulations.

According to M.N, Shaw on International Law[4], there were a variety of theories prior to the First World War with regards to status of airspace above states and territorial waters. One view was that airspace was entirely free, another view was that there was, upon an analogy with the territorial sea, a band of "territorial air" appertaining to the state followed by a higher free zone.

A third approach was that all the airspace above a state was entirely within its sovereignty, while a forth view modified the third approach by positing a right of innocent passage through the air space for Foreign Civil Aircraft.[5] There was a particular conflict between the French theory of freedom of the air and the British theory of state sovereignty, though both agreed that the airspace above the high seas and terrae nullius was free and open to all.

The outbreak of the First World War with its recognition of the security implications of use of the air changed the earlier system. The prevailing approach therefore was based on the extension of state sovereignty upwards into airspace. This was acceptable both from the defense point of view and in the light of evolving state practice regulating flights over national territory. This was reflected in the 1919 Paris Convention for the Regulation of Aerial Navigation which recognized the full Sovereignty of States over air space above their land and territorial sea.[6] Accordingly, the international law rules protecting sovereignty of state apply to the airspace as they do to the land there under. This principle was pronounced upon by the International Court in the case of Nicaragua.[7]

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4. (2005) Cambridge University press USA, 4th Ed, page 463.

5. Oppenheim's International Law, pp 650 – 1 D.A Glass & C, Cashmore, Introduction to the Law of Carriage of Goods, (1989), Sweet & Maxwell, Pg 6-94

6. Innocent passage to the private aircraft of other parties so long as they complied with the rules made by or under the authority of the convention. Similarly, Articles 5-10 provided that nationality of aircraft would be based upon

However, sovereignty was understood to extend for an unlimited distance into the airspace, although this has been modified by the new law of outer space to the effect that each state has exclusive sovereignty over its airspace.[8]

The present regime concerning Air Navigation developed from the Chicago Conference 1944 and the Conventions were adopted therein. The Chicago Convention on International Civil Aviation, which does not apply to state Aircraft (for example military, customs, and police aircrafts) [9] emphasized the complete and exclusive sovereignty of states over their air space[10], Article six thereof reinforces this by providing that no scheduled International air service may be operated over or into the territory of a contracting state without special authorization of that state.

However, the states parties to the Convention qualified their sovereignty by agreeing in Article five that aircraft of other contracting states:-

> *Not engaged in scheduled international air service, shall have the right to make flights into or entrances non-stop across (their territory) and to make stop for non-traffic purposes without the necessity of obtaining prior permission and subject to the right of the state flown over to require landing*[11]

This provision has in practice been viewed as an exception to the general principle enumerated in Article six of the Convention, particularly since states have required that permissions be obtained prior to the acceptance of charter flights over or into their territory, even though such flights do not really come within the meaning of

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8 Air law (2000) (4th Ed) vol. 1. London Butter worth at 1.

9 (2005) Cambridge University press USA, 4th Ed, P 463.

10 See e.g. Oppen heim's International Law, pp 650-1

Article six or within the definition of scheduled International air services put forward by the Council of the International Civil Aviation Organization in 1952. [12.]

To this end, the Chicago International Air Service Agreement, 1944, dealing with scheduled international air services, specified that contracting states recognized the privilege of such service to fly across their territories without landing and to land for non-traffic purposes. These two freedoms agreement has been termed and regarded as accompanied by a five freedoms agreement upon which the 1944 Chicago International Air Transport Agreement added to the aforementioned provisions extensive privileges of taking on and putting down passenger's mails and cargo in the territories of contracting states.

This Agreement however was not ratified by many states and the U.S.A withdrew from the Agreement in 1946 claiming that too much of commercial values had been granted and traded away by the agreement. This consequently earn the agreement little importance today in the aviation circle.

The implication of this is that, in actual practice, the regulation of international scheduled services has been achieved by an extensive network of bilateral agreements such as the U.K-U.S.A Bermuda Agreement of 1946[13.] It is pertinent to note further that the Chicago Conference 1944 also led to the creation of International Civil Aviation Organization (ICAO), a United Nation specialized Agency based in Canada, which concentrates upon technical or administrative co-operation

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12. The distinction between scheduled and non- scheduled international services is not entirely clear. By Article 68, each contracting state to the convention may designate the route to be followed within its territory by any international air service and the airports which any such service may use. See international law association; Report of the 63rd conference at war saw, London, 1988 pp 835.

13. Which was replaced by the Bermuda 11 Agreement of 1977 See Heathrow Airport user Charges Arbitration

between states and adoption of agreed safety standards to the encouragement of the expansion of navigation facilities.[14] ICAO's aims and objectives are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport. It has a range of powers from legal to technical and administrative powers and it consists of an assembly, a council and such other bodies as may be necessary.

The Chicago Conference in the main therefore reaffirmed the principles agreed upon in 1919 Convention with regards to the sovereignty of states over its airspace and the need for permission to operate schedule international air services among other issues. Air cabotage, i.e. the right to carry traffic between points within territory of a state can be reserved exclusively to the state, as traffic between metropolitan and colonial area. It must be noted that the Chicago Conference system was to some extent undermined by the growth of bilateral Agreements as the means of regulating International air transport, although many common principles may be discerned in such Agreements as they are upon the Bermuda model.

The Bermuda principles in general made provisions that the air transport facilities available to traveling public should bear a close relationship to the requirements of the public to the extent that there shall be a fair and equal opportunities for the carriers of the two nations to operate on any route between their respective territories. The operations by air carriers of either government of the trunk services described in the Annex of the Agreement and the interest of the carriers of other government shall be taken in to consideration, so as not to unduly affect the services which the latter provides on all or part of the same routes. It should be the understanding of both governments that services provided by a designated air carrier under the Agreement and its Annex shall retain, as their primary objective, the provision of capacity adequate to the traffic demands between the country of which the carrier is a natural and the

14. Ibid

country of ultimate destination of the traffic. The right to embark or to disembark on such services of international traffic destined for and coming from third countries at a point or points on the routes specified in the annex to the agreement, shall be applied in accordance with the general principles of orderly development to which both governments subscribe and shall be subject to the general principle that capacity should be related;

a. To traffic requirements between the country of origin and the countries of destination;

b. To the requirements of thorough airline operations; and.

c. To traffic requirement of the area through which the airline passes after taking account of local and regional service.

It should be the intention of both governments that there should be regular and frequent consultations between their respective aeronautical authorities and that there should thereby be close collaboration in the observation of the principles and the implementation of the provisions outlined therein and in the Agreement and its Annex[15] One major feature of Civil Aviation is its international nature. The aircraft which represents the bedrock of civil aviation activities moves for a very high speed and in three dimensions that enables an aircraft enroute to a particular destination to pass through the air space of several other countries, each having its own distinct national laws and customs, [16] so also is the specter of law relating to civil aviation. It is therefore an aspect of law that cannot be considered in isolation from the development in other jurisdictions.

15. M.N Shaw, International Law (2005), Cambridge University press, USA, 4th Edition, PP 467-468

From historical perspectives, it is on record that the hot air balloon constructed by the Montgolfier brothers (Joseph and Etienne) represented the first aircraft to be used for aerial

transport, including carriage of mails and for military purposes such as reconnaissance and bombing in the year 1783,[17] when a police directive was issued aimed directly and exclusively at the balloons of the Montgolfier brothers. At that time flights were not to take place without prior authorization.

For instance, in America, the first authenticated flight by man in a power driven heavier than – air machine was achieved on 17th December 1903 by the Wright Brothers at Kitty Hawk, North Carolina. According to Shaw Cross and Beaumont on air law, Professor Langby had already designed a practical aircraft capable of flight under its own power which was regarded as the embryonic prototype of all modern aeroplanes. In the year 1909, Lawyers came in to aviation industry by establishing and founding International Committee on Aviation Law which formed the basis for the coming into being of a Conference of Aerial Navigation in 1910 by representatives of Nineteen Nations in Paris. At the end of the Conference, they drew up but could not agree upon a Code of International Air Law. Consequently, the

British Parliament in 1911 enacted the Aerial Navigation Act of 1911 which was re-enacted (with amendment) in 1920 and repealed by the ultimate Civil Aviation Act of 1949, a statute applicable in Nigeria being a British colony.

16 Diederiks- verschoor, I.H (1993) introduction to Air law (5thed.) P4

17. See Shaw Cross and Beaumont (Butterworths) Air Law. (4th Ed) Vol. 1. London, Butterworths at 111. Note that two weeks after the first flight on a hot air balloon, Jacques Charlesa French and Nicolas Robert lifted off from Paris in

In the Nigeria context, the first flight in the Country was recorded in 1925,[18] although commercial aviation did not commence until 1935 when the Imperial Airlines started regular flights between Nigeria and the United Kingdom. Immediately after the Second World War, the British overseas Corporation (BOC) replaced the Imperial Airlines to provide air transport service to the British West African Colonies. The service was taken over by the West African Airways Corporation (WAAC) in 1946.

This Corporation broke up when Ghana gained independence in 1957 and resolved to form its own independent airline. Consequently, the West African Airline corporation was later renamed Nigeria Airways limited after the Federal Government of Nigeria bought over the shares of other share holders in the Company. The aviation industry in Nigeria prior to independence had continued to be governed by laws promulgated by the British Parlianment[19] until 1964 when the Civil Aviation Act 1964 was enacted and since then the industry had continued to be administered principally by Nigerian legal institutions and legal instruments.

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18. When a Royal Airforce Officer Stationed in Sudan decided to undertake a long cross country flight from Khrtocum to the Northern parts of Nigeria and landed on the race cource in Kadu. (See Adegboyega S. (2000) Aviation Law and Business in Nigeria – presented and future" quoted in the Annual Aviation Law and Business Digest. Vol. 1 Page 11.

19. The Nigeria Independence Act 1960 abolished the colonial Law validity Act 1865 and provided that no Act of UK

AIR CRAFT ACCIDENT

All methods of transport are inherently dangerous in the sense that transport involves moving of vehicles[20]. A mistake by the pilot or driver of a vehicle or a mechanical failure of one of many components of an aircraft can have a catastrophic consequence. Thus, overlooking some vital steps in procedure by a person far removed from the actual vehicle can result in an accident hence innocent bystanders are equally at risk from an accident as the crew, the driver and the passengers.

There is no method of transport that is immuned from incidents leading to death or injuries to passengers, crew or bystanders. The toll of human suffering is immense for the few people involved as it is expected that in a well run industry, accidents should never happen, but in transport systems accidents occur with certain regularities.

To some jurists, no accident should happen at all but occasional ones are inevitable as part of the price of moving around. According to R.C Cosllin,[21] the goal should always be absolute safety, but absolute safety is not obtainable in any form of transportation as all the sad factors are going to come together and result in an accident.

One may therefore asserts that all aviation institutions, including the regulatory agencies, the wide array of voluminous manuals, technical documents, laws, rules among others exist with the principal aim of ensuring safety of air transportation. In spite of all these elaborate planning and processes to ensure safety, accidents still occur. Accident therefore according to the Concise Oxford Dictionary[22], is an unfortunate incident that happens unexpectedly and unintentionally, something which happen by chance. It can also be described as unintended and unforeseen injuries, occurrences, something that does not occur in the usual course of events or that could not be reasonably anticipated.[23]

20. Edmund J. G, (1989) Managing Transport Operations, Kogan. 135.

From the perspective of aviation however, accident has been variously defined literally and technically. The Civil Aviation (Investigation of Accidents) Regulations[24] defined "accident" to include "any fortuitous or unexpected event by which the safety of an aircraft or any person is threatened".

According to O Oduselu Mnse,[25] (March 2008) "accident" means "an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time such person have disembarked, in which:

a. *A person is fatally or seriously injured as a result of; being in the aircraft or in direct contact with any part of the aircraft or in direct explosion of Jet blast.*

b. *The aircraft sustained damage or structural failure which' adversely affect the structural strength and would normally require major repair or replacement of the affected component.*

c. *The aircraft is missing or completely inaccessible.*

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22. 10th Edition at P 7.

23. See Blacklaw Dictionary, 7th Edition at P 15.

24. The Regulation made pursuant to section 2 of the old Civil Aviation Act (CAP. 51 Laws of Federation 1990. particularly Section 2(1) (d)

In the same vein, Regulation 2(1)[26] described an Aviation Accident as an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked in which:-

a. a person suffers a fatal or serious injury as a result of, being, in or upon the aircraft, direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or direct exposure to jet blast, except when the injures are from natural causes, self inflicted or inflicted by other persons,

or when the injuries are to stowaways hiding outside the areas normally available to passengers and crew, or

b. The aircraft sustained damage or structural failure which: adversely affects the structural strength performance or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to the engine, its cowlings or accessories, or for damage limited to propellers, wings, antennas, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin, or

c. The aircraft is missing or completely inaccessible.

It is pertinent to distinguish between an aircraft accident and an incident. Thus, an incident literally means falling upon something; liable to occur; naturally belonging (to): consequent – that which happen: an event: a subordinate action: an episode: that which naturally belongs to or is consequent upon something else: a minor event showing hostility and threatening more serious trouble: a brief violent action.[27] From the statutory point of view, Nigerian legislation on Aviation, (unlike the UK Regulations and Annex 13 to the popular Convention on International Civil Aviation, Nineth Edition, 2001) did not take cognizance of what is an incident, hence contain no definition of an incident. Accordingly, both the United Kingdom Regulation of 1996 and the Annex 13 (supra) defined an accident as an occurrence, other than an incident, associated with the operation of an aircraft which affects or could affect the safety of operation.

26. Civil Aviation (Investigation of Air Accidents and Incidents) Regulations; United Kingdom, Statutory Instrument No. 2998 (1996).

A serious incident therefore has been described as an incident involving circumstances indicating that an accident nearly occured[28]. Consequently, the major distinction between an accident and a serious incident only lie in the result and aftermath thereof.

To this end, it is not every aircraft incident that can be described as accident thus, every air craft accident involves incident but not every air craft incident involves accident. This view though legalistic, yet it is logical and academic. Even the press and the public elites could not differentiate between an aircraft incident and an accident as they describe every air crash as an accident.

There is the need therefore to broaden the definition and the meaning of aircraft accident in Nigeria by distinguishing between same and an aircraft incident. According to the Attachment C to Annex 13 and the ICAO Accident/incident Reporting Manual (Doc. 9156) the following incidents may be considered serious incidents and not accidents:

27. According to Chambers English Dictionary (1990) 7th Edition.

28. Underscored C to Annex 13 and the ICAO Accident/Incident Reporting Manual (Doc. 9156)

1. New Collisions requiring avoidance manouvire to avoid a collision or an unsafe situation or when an avoidance action would have been appropriate,
2. Controlled flight into terrain only marginally avoided,
3. Aborted take-offs on a closed or engaged runway,

4. Take-offs from a closed or engaged runway with marginal separation from obstacles.

5. Landing or attempted landings on a closed or engaged runway,

6. Gross failures to achieve predicted performance during take – off or initial climb,

7. Fire and smoke in the passenger compartment, in cargo compartment or engine fires, even though such fires were extinguished by the use of extinguishers agent.

8. Events requiring the emergency use of oxygen by the flight crew.

9. Aircraft structural failures or engine disintegrations not classified as an accident

10. Multiple malfunctioning of one of more aircraft systems seriously affecting the operation of the aircraft.

11. Flight crew incapacitation in flight.

12. Fuel quantity requiring the declaration of an emergency by the pilot.

13. Take-off, or landing incidents such as undershooting, overrunning or running off the side of runaways.

14. System failures, weather phenomena, operations outside the approved flight envelope or other occurrences which could have caused difficulties controlling the aircraft.

15. Failure of more than one system in a redundancy system mandatory for flight guidance and Navigation.

16. Running in to unexpected obstacles on the runway during landings or take-off (for example, cattle grazing on the runaway or unexpected pot-holes).

According to the learned Author of Managing Transport operation,[29] the subject of safety in transport is usually treated in terms of the renowned three major points namely; enforcement, education and engineering. According to him, enforcement involves the setting of standards, both technical and behavioural, and backing the standards with a system of penalties if they are breached, and providing some forms of enforcement agency to apply sanctions to those who break or defy those standards.

Education and training are vital and well recognized in the matter of transport safety. Thus, education has wider implications than simply teaching to attain competence. It must involve alerting every body involved in transport operations to the risks inherent in poor procedures and in deviating from the safe forms of operation. No matter the high levels of engineering safety inherent in any transportation tools or system, the roles and impacts of human being that maintain and operate it is of imminence. Consequently, human lapses can only be minimized or eradicated by proper education and training which do not end only in teaching how to perform the transportation

29. E.J, Gubbins (1988) Managing Transport Operation Kogon, P136

tasks but enlighten the operators of the risks involved in any action they undertake in the processes. Engineering being the third factor is one of the major concepts in the design and construction of all transportation tools including aircrafts. Engineering therefore hold the key to transport systems because much safety regulations are the result of engineering analysis. Consequently, there are certain numbers of factors

which are usually present in all accidents; for example chance which is the random happening which could not be foreseen by even the most safety conscious individual. In the legal parlance, this is often referred to as an "act of God". The craft of an aeroplane after hitting a flock of birds and the sinking of a ship by a freak wave which could not be predicted are pertinent instances. Although these types of accidents are becoming less frequent because of the scientific knowledge about the dynamics of ocean system. The generation of weather patterns and the way in which chance happenings arise. Thus, presently, less air crash can be attributed to an act of God.

Furthermore, the largest cause of accidents in transport can be classified as human error[30]. The Ship Captain takes the blame for the ship running aground because he did not have the correct charts or had to stay on the bridge in fog for too long because he was not confident in his junior officer's ability to look after the ship. The airline pilot overruns the runway during landing at an unfamiliar airport.

Inherent faults in the engineering of the vehicle and the infra – structure can cause an accident. Engines can fall-off aero planes because the maintenance was not properly carried out.

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30. Many researchers contended that all accidents are the result of human errors. especially if the error can be attributed to the operator of the Vehicle and the nature of the cause and effect can be traced for enough back along the path of actions leading to the accident, it is therefore easier to blame human error as cause of an accident.

AIRCRAFT ACCIDENT INVESTIGATION

The Chicago Convention, applicable to over 150 member states of International Civil Aviation Organization, (including Nigeria), imposes an obligation on the state where an accident occurs to institute an enquiry in defined circumstances, and as far as its law permits to conduct the inquiry in accordance with ICAO procedures.

Similarly, observers from the state of registration of the aircraft are entitled to be present at the enquiry if that state is not the state in which the accident occurs.[31] Consequently both the Articles 26 and 37 and the Annexure 13 were designed to provide a common International frame work for the investigation of accident in Civil Aviation for it was foreseen that an aircraft involving in an accident may be registered in a Country, constructed in another Country, operated by an airline company in another Country, flying between two other Countries and have an accident in another distinct Country.

According to Annexure 13 of the Convention, the objective of an Accident inquiry shall be the prevention of future Accidents and not to allocate blames.[32] Some states ensure impartial investigations and inquiries, by forming independent Accident Investigation bodies. In USA, it is the Law that National Transportation Safety Board's accident reports, can be used in damage suits arising out of the Accident and that its reports are frequently highly critical of the Federal Aviation Administration. In the United Kingdom, the Air Accident Investigation, a Branch of the Department of

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31. See Article 26 of the Chicago Convention. See also Article 37 which specified that standard and recommended practices for aircraft accident inquiries are to be produced in Annex 13 to the Convention.

32. Some states conduct their inquiries with that objective in mind widely differing national laws and level of technical expertise and national interest. What perceived to be national interest and public interest in aircraft Accident reports tend to interfere with pursuit of the ideals expressed in the Chicago Convention and the Annex 13 thereof. This is because in many countries the aircraft accidents are investigated by the Department of Trade.

Trade is independent, in that it reports directly to the Minister of the Department and criticizes the Civil Aviation Authority and recommends changes in its regulations and procedures. High standards are not achieved in all Countries particularly the so called third World countries as a result there have been cases where a state considers an accident report published by another state to be so deficient that it has to publish its own report or make a formal comment on the original report. However, in 1979, the ICAO's Annex 13, was amended so as to permit an accredited representative of another state to append a dissenting minority attachment to the

official accident Report, and the United Kingdom in 1980 used that right to append an attachment to the Panish report of an accident to a British registered Boeing 727 that crashed at Teneriffe in April 1980.[33]

To this end, Annex 13 described the investigation as a process conducted for the purpose of accident prevention which includes gathering and analysis of information, the drawing of conclusions, including the determination of causes and when appropriate the making of safety recommendations. It has equally been described as an inquiry into the circumstances leading to an accident to determine its causes and effects with the aim of preventing future occurrences. In the same vein, states with major involvement in the civil air transport industry such as the United Kingdom, has teams of trained investigators on standby at all times, and their investigation kits, including technical measuring equipment, cameras, protective clothing and other clothing's suitably for wear in any climate are always ready for use. Accordingly, the United Kingdom definition of a reportable Accident includes death or serious injury to a crew member or passengers, structural damage to an aircraft and any failure requiring major repair or affecting aircraft performance.

33. An earlier instance of states disagreeing on the probable cause of an accident arose from the fatal accident at Munich on 6th February, 1979.

Furthermore, in the United Kingdom, a decision as to whether an investigation is to result in a public inquiry is made by the Secretary of state, and the determinant is usually the degree of public concerned and national interest. Increasing technical complexity of aircraft operations and accident investigation is ending to favour the non – public forum, but in every case the findings are promptly sent to all interested technical parties so that any preliminary precautionary actions needed may be quickly taken. Thus, any person whose reputation is likely to be called into system is provided with a copy of the original draft report and is allowed to make representations or to seek change before publication.[34]

However, in the USA, the procedures are different, because the freedom of Information Act leads to expectations of an early public hearing where a number of persons and Organizations are party to the proceedings. This is where the ground to later litigation are set usually to the detriment of the truth findings because both the investigators and the witnesses are put under great pressures to provide answer to every question.

The objectives of on-site investigations are similar everywhere, they are to avoid early interpretation taking the form of a theory that could prejudice the importance of any information that becomes available at a later stage and to seek corroboration for all items of evidence. Ideally, all pieces of air wreckage are recovered after their position in the pattern of wreckage has been plotted, and all witnesses and survivors and particularly the flight crew are questioned. Post mortems are conducted and victims identified against their known sitting positions.

34. This procedure is used, and on one occasion, after a fatal Accident to a four engine jet-powered airline, the Pilot accompanied by a technical advisor persuaded the authorities to amend the report after showing that it failed to take account of the heavy work load experienced during the very short flight. Though the main conclusions of the report were not affected, but mention was made of the mitigating circumstances which ensured that the report was fair to ...

Recovery of the flight recorders take a high priority and the investigators take every step possible to prevent them from being impounded by coroners, police and investigating magistrate,[35] as delay in obtaining flight recorder information could prevent the desired objectives.

Failure of structures, materials, engines, flight control systems, air craft systems, human failures and combinations of all these failures are critically looked into. Air traffic control Radal plots, tape recordings of radio transmissions and reports of the weather prevailing at the time of the accident are examined if available.

Investigators are akin to detectives, particularly when sabotage or a failed attempt at a hijacking is suspected and the help of forensic and explosive experts is required[36] on completion of on-site investigation, wreckage may be moved to a place where better technical facilities are set out in the correct position relative to each other with further exhaustive tests taking place until a complete understanding and appraisal of the evidence is available. This process cost a great deal of funds but considered to be highly essential if air safety is to be maintained or achieved.[37]

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35. An early form of flight Recorder performed only an "eye witness" function, recording five to six parameters by making scraches on a metal foil medium. The parameters were recorded in analogue form and were usually altitude, air speed, magnetic heading, time and G - forces. The recorded informations are useful where no reliable human observers witnessed an accident, or to supplement reports made by humans.

36. Laden I Observed that a possible way of avoiding the problem of technical incompetence It has been observed that a possible way of avoiding the problem of technical incompetence or shortage of financial resources to undertake a perfect aircraft accident investigation is to make accident investigation an international activity under the auspices of ICAO or in alternative to make it a regional activity under regional organizations such as European Community. This according to the learned Author of Air Travel how safe is it?l[38], will ensure objectivity, sharing of costs and pooling of experts[39]. Furthermore, a call has been made for the formation of an "European Accident Investigation Board in which the best qualification experts of all European Countries would cooperate to investigate every accident occurring in European air space involving aircraft of European Carrier in order to reach undisputable conclusions about the causes of these accidents and to learn from their findings. This forum can as well be established in Africa or at its sub-regional level.

Moreover, training for accident investigation has become a welcome feature in recent years as the introduction of accident investigation Courses are found in a number of technically

competent seat of learning in the world. Courses are available in the University of Southern California, Canfield Institute of Technology in England and Institute of Aviation Safety of Stockholm.[40]

In event of Accident or an incident, information stored in the recorders is vital evidence and is normally in the care of the Chief Accident Investigator. This ensures maximum security and privacy vitally important for flight safety information.

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38. See Laure at P186.

39. In 1987 by Mr. Anastass Opoulos, president of the transport commission of the European parliament while presenting a Report.

40. In Nigeria, Establishment of College of Aviation Technology Zaria, Institute of Transport Technology Zaria is of pertinence in this direction. Similarly, the College of Aviation by the Kwara State Government in conjunction with

This arrangement though mostly work well, but threatened in some states where investigating Magistrate gains early possession of the information and misinterprets same.

An early form of flight Recorder performed function of an eye witness and records five or six parameters by making scratches on a metal foil medium. The parameters are recorded in analogue form and were usually altitude, airspeed, magnetic heading, time and of G-forces. The recorded informations are useful where there is no or poor human observers.

These concepts have been developed in form of three distinct recording devices namely: flight Data Recorders (FDRs) Cockpit Voices Recorders (CVRs) and maintenance Recorders (MRs).These devices are generally referred to by public and Media Practitioners as Black Box Flight Recorders, even though they are usually bright orange in color to facilitate their locations at crash site.

The Flight Data Recorders (FDRs) device is used by Wright Brothers on their first flights, to record engine revolutions, distance flown through the air and duration of flight. In 1983, ICAO reviewed the earlier ten years old standards for flight data recorders and decided, over the opposition of the USA, to update the minimum requirements of having five parameter recorders for older turbine engine aeroplanes with a more demanding requirement for wide bodied aircraft because of the vital role of accident and incident investigation in promoting safe and efficient aviation.[41]

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41. See ICAO Bulletin for October 1983 which stated that; with the escalating costs of accidents, it has become increasingly important to ensure that anything that might have a bearing on the safety of aircraft operations be determined at the earliest possible stage of an investigation. To achieved this, certain important improvements in equipment and procedures are needed to gather and analyse accident and incident information rapidly……..The continuing evolution of modern aircraft has place added emphasis on the capabilities and limitation of the human being in the overall mean – machine environment system

It was further stated that digital avionics have outmoded analogue mechanical systems that the expanded parameter flight recorder is the only viable means of acquiring vital information, and that the metal foil type of FDRs do not provide sufficient data to determine adequately what occurred in an accident. The ICAO therefore on 1st January 1987 recommended the introduction of Type 1 digital FDRs capable of recording thirty – three parameters for at least the last twenty five hours aircraft operation, or Type 2 digital FDRs cabable of recording at least fifteen parameters for a minimum of thirty minutes, with the choice of type of FDR determined by the type of aircraft to which they will be fitted.

It is on record that in the mid 1987, the USA required that all large transport Aircraft have their old – type foil Recorders replaced by Digital Recorders – albert with only six parameters being recorded with only newly manufactured aircraft being required to have seventeen parameters on the recorders[42].

The Cockpit Voice Recorders (CVRs) has two types and with regards to type one, the ICAO concluded that the continuous loop recording time should be increased from thirty minutes to sixty minutes and the number of tracks recorded should be at least four. It further recommended that Type 2 should record at least two tracks for at least thirty minutes.

There is also Maintenance Recorders (MRs) there is no mandatory requirement for the installation and use of MRs but some airlines installed them to record as many as 200 parameters, mainly for the purpose of monitoring the performance of the aircraft, its engines and systems. In some instances, MRs is combined with FDRs with only the parameters required for the purpose of accident and incident investigation.

43 Safety experts welcomed this improvement but deplored the limited number of parameters to be recorded, particularly on the older aircraft.

The current trend therefore is for an airline maintenance base to be able to receive data from aircraft away from base, either by transmitting data over telephone or telex lines from intermediate points of landing or even by real time radio links from the aircraft while in flight.

The FDR and the CVR shall function at all time that an aircraft is in motion under its own power. The flight deck crews are not permitted to switch off the equipment, except at the end of an incident free flight. The CVR operates continuously on a thirty or sixty minute loop, every items of audio information including all radio contracts, all cockpit conversation and all audio inputs and outputs to and from all of the radios are recorded. A typical of FDR is to record times, altitude, speed, course, flight attitude of forces, engine power and operating conditions such as temperatures, pressure radios, flight control positions and pilot inputs, aircraft configuration such as wing flap and landing gear positions, automatic flight control system usage, radios in use and performance of all safety critical systems.[43]

To facilitate the location and discovery of flight recorders, ICAO recommended that they should be painted with a distinctive colour and carry reflective material. They are also required to be fitted with an automatically activated underwater locating device. Available types include water, or of activated radio beacons, noise makers, or

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43. In most cases, agreement between airlines and pilot associations is that information stored in the FDR and CVR are used only in the interest of air safety, and that in event the routine monitoring of the data shows what appears to be a breach of standard operating procedures, or as any other breach, it is arranged for the information to be anonymous in the first instance, and offer discussions between the airline and pilot association before consideration for taking disciplinary action against the pilot concerned is considered.

atomic trace elements. The location devices require their independent power sources that should last for at least fourteen days. In view of an accident information stored in the recorders being vital evidence it is normally in the care of the chief accident investigator in order to provide security and privacy for vitally important flight safety information.

It has been observed[44] that when a Video Recorder is combined with the flight Data Recorder (FDR) a new dimension in aircraft accident investigation would be available. A Control Cab Video Recorder [CCVR] would be a great tool to more positively determine causes of accidents. Its use therefore would remove much guessworks and doubts, and ultimately prevent future re-occurrence. It was further observed that there are more information in the cockpit of an Airplane than in any of their place on board and recording the information with a CCVR, for use only in case of an accident or incident, would be the single most of important investigative tools not yet conceived.

It was argued that all voice communications in the cockpit are recorded, many parameters on the controls, engines and flight attitude are recorded, but making a visual record of what was going on in the cockpit had been resisted.[45] It has been argued in support of CCVRs that

instances are abound where the proposed equipment would have provided information on whether intruders were in the cockpit at the time of an Accident. The use of CCVR would make information available on

What was being displayed to the pilot at the time of an accident, crew inputs to flight controls, their management of the aircraft systems etc. In conducting investigation, Annex 13 and Article 26 Chicago of the Convention are of importance. Article 26 required inquiries to be conducted in accordance with ICAO procedures subject to National Law, while the Annex 13 which was adopted pursuant to Article 37 of the same Convention provided that the accident investigation shall be conducted in compliance with its provisions.

In an attempt to reconcile the conflicting positions between the Annex 13 and Article 26, the ICAO maintained that Article 37[46] remained the controlling Article in the development of an aircraft accident inquiry, though nothing in the Annex must contravene the express terms of Article 26 or any other Article of the Convention. It equally posited that the Annex may deal with any relevant matter whether or not expressly dealt with by Article 26 or by any other Article of the Convention. The ICAO, therefore decided that[47] Annex 13, is the procedure to be followed by contracting states for inquiry into accident involving death or serious injury and it was instituted in accordance with the provisions of Article 26 notwithstanding that the states may in accordance with Article 28 deviate from the Annex while complying with ICAO procedure with respect to accidents covered by Articles 26. To this end, where the accident indicates serious technical defect in the aircraft or air navigation facilities, inquiry is to be conducted in accordance with national proceeding of the state concerned subject to the obligations derived from Article 26.

46. See Annex 13, Ninth Edition (July 2001). Page 1/11/01(v).

According to the learned Author of introduction to Civil Aviation Law in Nigeria[48] the investigation of accidents and incidents embraced the following functions:-

1. Initial action at the scene of an Accident (Securing the wreckage).

2. Initiation of the wreckage Investigation.

3. Operational Investigation i.e. crew histories, flight planning, weight and balance, weather, air traffic services, communications, navigation, aerodrome facilities, aircraft performance, compliance with instructions and witnesses.

4. Statements from the controllers, final flight path determination and the sequence of flight.

5. Flight Recorders.

6. Structures Investigation.

7. Power plant Investigation – Engines.

8. Systems Investigation – hydraulics, electrical, pressurization and air-conditioning, ice and rain protection, instruments, radio communication, and radio navigation equipment.

9. Maintenance Investigation.

10. Human factors Investigation – contributions by human factors, pathologist's analysis, mortuary, human remains and personal property.

11. Evacuation, search, rescue and fire fighting Investigation.[49]

48. Callistus E. U. Introduction to Civil Aviation Law in Nigeria. (2006) Aviation Publishing and Consultancy Company Ltd, P198.

49. Others are reporting of occurrences to recognized authorities/Agencies, Final Report, verification of contents of final report with persons and agencies who are blame worthy; and lastly, accident prevention implementation of.

It is required under Chapter 4.1 of Annex 13 to the Convention that notification of an Accident must be forwarded with a minimum delay through the most suitable and quickest available means to the State of Registry of the Air craft, state of the air line operator, state of design, state of manufacture and/or the International Civil Aviation Organization in case the Aircraft is of a maximum mass of over 225kg.

In Nigeria, the notice is to be provided by the Commander of the Aircraft or if he is dead or incapacitated, the owner, operator, hirer, or other person on whose behalf he was in command of the Aircraft to the Minister of Aviation or the Police Authorities[50]. Notice to the Aviation Minister is required to contain the following informations:- the type, nationality and the registration marks of the Aircraft, the name of the owner, operator and hirer if any of the aircraft, the date and time of the Accident, the last point of departure and the next point of intended landing of the Aircraft, the position of the Aircraft with reference to some easily defined geographical points, the number of persons (if any) killed or seriously injured as a result of the accident, the nature of the accident, brief particular of damage to the aircraft etc. [51]

ACCIDENT INVESTIGATION BUREAU

The Federal Government of Nigeria through the Civil Aviation Act 2006[52] established the Accident Investigation Bureau (AIB) as a cooperate body and an autonomous

50. See Regulation 5(1) of the Nigerian Regulations.

51. It has been argued that there is need to standardize the contents of the Notification to include other items such as presence and description of dangerous goods on board the Aircraft and other items listed in Annex 13.

Agency reporting to the president through the supervisory Minister.[53]

In tune with provision of section 29 of the Civil Aviation Act 2006, every reported Aircraft Accident or serious incident, to which the Regulations apply shall be the subject of the AIB Investigation. In the same vein, the Commissioner/CEO of the Bureau may take measures to investigate any incident that is not a serious incident where he or she considers that such Investigation may be expected to draw significant air safety lessons.

The Bureau, among others, has the following statutory functions to perform in connection with Aircraft Accident Investigation and safety in Nigeria:-

a. To investigate air accidents and serious incidents that occurred within Nigerian air space and anywhere Nigeria's interests are affected.

b. To make safety recommendations.

c. To gather and analyze air safety data for accident and incident prevention purposes.

d. To ensure compliance with safety recommendations by carrying out accident prevention monitoring programs.

e. To liaise and collaborate with industry stakeholders in ensuring aviation[54] safety.

Consequently and in consonance with the aforementioned statutory functions of the Bureau, the Bureau fashioned out for itself ten points agenda as follows:-

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53. According to Odesalu, S.O, the Commissioner/Chief Executive Officer to the Bureau, the vision of the Bureau is to be a foremost Accident Investigation Authority striving towards improved Aviation Safety and mission to be dedicated to carry out highly professional Accident Investigations with highly trained and dedicated facilities – see presentation to the Nigerian College of Aviation Tech on the Activities of Accident Investigation Bureau page 6.

1. To improve aviation safety by determining the circumstances and causes of air accidents and serious incidents and making safety recommendations intended to prevent recurrence of similar Accidents in future.

2. To conduct thorough, independent, impartial and timely Investigations in to air accidents and serious incidents.

3. To respond quickly to air accidents and serious incidents, lead and manage the accident investigation team and ensure their safety at the accident location.

4. To develop and maintain effective working relationships with emergency service providers at Accident sites and throughout the Investigation.

5. To produce clearly written, thorough and concise report with well – founded analysis and conclusions and causes of accident's and serious incidents without attributing blames.

6. To treat the survivors and relatives of victims of air accidents sympathetically and help them to understand what happened and what is being done to prevent similar accidents in future.

7. To ensure that Nigeria complies with its national and International statutory obligations for the investigation of air accidents and incidents.

8. To improve aviation safety in general by educating and promulgating the lessons learnt from accident investigations.[55]

With respect to the functions and responsibilities of the Bureau, the normal sequence of desired events when an accident occurs can be itemized as follows:-

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55. Others are to carry out activities that will prevent Accidents and enhance Aviation safety and finally, to ensure that our personnel are well trained and well equipped to meet those challenges of their statutory obligations.

a. Accident occurs.

b. The emergency services respond.

c. The Accident is reported to AIB by Air Traffic control, the police, the pilot, the operator or an eye witness.

d. An AIB field team is dispatched.

e. Priority action is taken by the police to secure accident site untill the emergency services complete their task.

f. The AIB Team arrives and, after a site briefing from the police incident Commander, they commence an initial examination of the site wreckage, retrieve any flight recorders and collect data including any witness statement taken by the police.

g. The AIB continues its investigation and develops a report for publication.

It is pertinent to stress that only authorized personnels[56] have access to the aircraft which is involved in an accident. The aircraft or its contents are not to be removed from the scene of accident except with the authority of the Minister of Aviation.

The aircraft can only be removed or interfered with for any of the specified purposes; Namely: extricating persons or animals, removing any mail, valuables or dangerous goods carried by the aircraft, preventing destruction by fire or other cause, preventing any danger or

obstruction to the public, air navigation or other transport systems and removing goods or passengers' baggage under the supervision of police officers.[57]

VICTIMS OF AIRCRAFT ACCIDENTS

There cannot be an aircraft accident without Victims, and there cannot be an aircraft investigation without victims. A victim of aircraft accident there fore can be described as a person who is fatally or seriously injured as a result of been in the aircraft, or in direct contact with any part of the aircraft or in direct exposure to Jet blast.[58]

Apart from the aircraft, passengers who doubled as victims of aircraft accidents are the subject matter of an aircraft accidents. One must therefore be a passenger first before becoming a victim of aircraft accident. A victim therefore is a person, who boarded an aircraft and Accordingly, victims of an aircraft accident are passengers who suffered a fatal or serious injury as a result of being in or upon the aircraft, or having direct contact with any part of the aircraft, including parts which have become detached from the aircraft or having direct exposure to Jet blast.[59]

An x-tray of the above definition gives a wider scope of who victims of aircraft accident are beyond being a passenger in the aircraft. It can therefore be said that a non passenger in an aircraft who suffers injury as a result of exposure to Jet blast can be described as a victim of the aircraft accident. Similarly, a person who suffers injury, loss or damage on land or water by an article or a person in or falling from an aircraft while in flight, taking off or landing, then, without prejudice to the law relating to contributory negligence, damages in respect of the injury, loss or damage shall be recoverable without proof of negligence or intention or any other cause of action, as if the injury, loss or damage had been caused by the willful act, neglect or default of the owner of the aircraft.[60]

58. See S O Oduselu, Accident Investigation Burenu, a paper presented at the Nigerian College of Aviation Technology, Zaria, on the 10th March 2008 at page 16.

59. See Regulation 2 (1) Civil Aviation (Investigation of air and incidents, United Kingdom, Statutory Instrument No. 2798 1996).

MEANING OF AIRCRAFT ACCIDENT

The concise Oxford Dictionary[61] defines an accident as "an unfortunate incident that happens unexpectedly and unintentionally, something that happen by chance".

Black Law Dictionary[62] seems to concern itself with the aforementioned definition by defining accident as "an unintended and unforeseen injurious occurrence, something that does not occur in the usual cause of event or that could not be reasonably anticipated".

In the area of aviation, technical definition is required to explain accident in its literal and technical meaning. The civil aviation (Investigation of Accidents) Regulations in its Regulation[63] 2 (1) (d) describe to accident, includes any fortuitous or an expected event by which the safety of an aircraft or any person is threatened".

In the united kingdom, aircraft accident is defined as: "an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, in which:

a. A person suffers fatal or serious injury as a result of:

i. Being in or upon the aircraft

ii. Direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or

iii. Direct exposure to Jet blast.

b. The aircraft sustains damage or structural failure which:

i. Adversely affects the structural strength performance or flight characteristics of the aircraft, or

ii. Would normally require major repair or replacement of the affected component.[64]

c. The aircraft is missing or completely inaccessible.[65]

The above definition is in common with that of Annex 13 to the Chicago Convention, dealing with aircraft accident and incidents investigation[66].

The Nigerian regulations on accident investigation, has no definition for incident. It is observed that the draftsmen did not take cognizance of what incidents are all about and their importance in the regulation. Both the United Kingdom Regulations and Annex 13 defined incident to mean: "an occurrence, other than an accident, associated with the operation of an

60. See Section 49 (2) of the Civil Aviation Act 2000

61. 10th Edition, at P 7

62. Black Law Dictionary, 9th edition P15.

aircraft which affects or could affect the safety of the operation". A serious incident however was defined by the two instruments as "an incident involving circumstances indicating that an accident nearly occurred".

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64. Regulation 2 (1) Civil Aviation (Ivestigation of Air Accident) Regulation of the U.K. Statutory Instrument No. 2798 (1996) quoted by C.A Uwakwe, Introduction to Civil Aviation Law in Nigeria, First Edition (2006), Aviation Publishing and Consultancy Co. Ltd, Lagos – Nigeria, page 192).

65. Note that an aircraft is considered missing when the official search has been terminated and wreckage has not been located.

For the purpose of comparism and analysis, the following examples of incidents are considered serious incidents by the Annex 13 and the ICAO manual[67]

a. Near collisions requiring an avoidance maneuver to avoid a collision on an unsafe situation or when an avoidance action would have been appropriate.

b. Controlled flight into terrain only marginally avoided.

c. Aborted take-offs on a closed or engaged runway.

d. Take-offs from a closed or engaged runway with marginal separation from obstacle(s).

e. Landings or attempted landings on a closed or engaged runway.

f. Fires or smoke in the passengers compartment, in cargo compartment or engine fires, even though such firs were extinguished by the use of extinguishing agents.

g. Event that required the emergency use of oxygen by the flight crew.

h. Running in to unexpected obstacles on the runway during landing or take-off.

i. Flight crew incapacitation flight

j. Aircraft structural failures or engine disintegrations not classified as an accident.

k. Fuel quantity requiring declaration of an emergency by the pilot.

l. Take-off or landing incident such as undershooting overrunning or running off the side of runways.

67. See Attachment C to Annex 13 and ICAO Accident Incident Reporting Manual (Doc. 9156).

NATURE OF COMPENSATIONS IN AIRCRAFT ACCIDENTS

Damages or Compensation means a sum of money awarded to a person injured by the tort or breach of contract of another[69]. Once a party to a contract establishes to the satisfaction of the Court that the other party has committed a breach of contract or that the other party has done or omitted to do an act which caused him injuries, the most common claim is that for compensation in form of damages[70]. This principle of common law was said to be laid down in the case of Robinson Vs. Harman[71]. Where it was observed that "the rule of the common law is, that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the situation, with respect to damages, as if the contract had been performed".

On the measurement of damages, the general rule is that damages are assessed from the time when the cause of action leading to the claim arose i.e. the date and time of the breach[72]. To this end, since it is apparent that the aim of awarding damages is to place the injured party, so far as money can do it, in the same situation as if the contract had been formed, victims of aircraft accidents are to be compensated or damages in the likes manner. Their quantum of compensation should be assessed in such a manner that such victims are

69. I.E. Sagal Nig. Law of Contract (1991) Spectrum Law Publishing, Kaduna Nigeria, p530.

70. (1848) 1 Ex. 530 at page 585

71. Johnson VS. Agnew (1980) A.C. 367 at 400. Although this rule is not absolute as courts have discretion depending

put in a position as if the accident that lead and resulted in to the injuries, loss or death did not occur or the position they would have been had the air carriage been successfully carried out without the accident.

Since victims of aircraft accidents differ in form and status, it is a poser whether it is necessary to consider their status in determining what is payable to them severally in form of compensation, or to place all of them on the same pedestrian of the fact that they are all human being. For example, whether the late Sultan of Sokoto who lost his life in an aircraft accident and a student of Usman Danfodio University Sokoto whose life was also lost in the same disaster can be offered the same amount of compensation.[73]

To this end, where the losses claimed by aircraft accident victims are for specified items which clear or known monetary values, same can be under a claim for "special damages. For example, the Plaintiff who only sustained injuries in an aircraft bringing a claim against the carrier claiming loss of earnings, cost of treatment, value of lost goods, psychological trauma e.t.c[74]. Where however, the court in itself has to estimate or asses the damages on its own, the resultant figure is known as general damages[75].

It is important to point out here that the above classification of damages in to special and general damages is not usually applicable in contract as the Supreme Court has discouraged same and urge litigants to ask for damages simplicita. Thus, the court in the case of Chanrai Vs. Khawam[76]. Where it was held as follows:-

We would point out that the terms special and general damages are misleading and are likely to create confusion in the assessment of damages, especially when these terms are employed in connection with cases in which such distinction is neither necessary or desirable.

73. Ibid note 2 at page 56

74. As was done in Chandi Vs. Pfizer (1965) 1 All NWR, 182 at 184

75. Supra at page 107

On the assessment of damages, it has been severally held that the amount of compensation can be assessed with a degree of accuracy which will go towards putting the injured person in the same position as he would have been had, he not sustained the wrong, hence reasonable and fair compenstaion[77].

Sufferings, pains and nervous shock which the plaintiff suffered in the past and is likely to undrgo in the future are considered in assessing the quantum of damages payable to a plaintiff. Nigerian Court usually award substantial damages for loss of amentity or loss of faculty[78]. Although, no amount of damages is commensurate or be perfect compensation for a grave injury, payable and awardable compensation largely depends upon the nature of the injury and the circumstances of a particular plaintiff[79].

Considering the combined effect of sections 48 (3) section 49 (2) and section 71 (1) of Civil Aviation Act 2006 which established a form of liability scheme in favor of passengers and other consumers against the carriers or the Civil Aviation Authority as to when the cause of actions legally arose reasonable enough to ground the Authority, the carrier or any other stakeholders liable. One can easily infer that a cause of action in an aircraft accident is nothing but series acts (whether contractual or otherwise) or relationship between a passenger and an operator or carrier such as payment and obtaining Air ticket, boarding the flight and taking off thereof etc.

77. Supra at page 140.

78. See Heaps Vs Perrite Ltd. (1937) 2 All ER 60, Oliver Vs. Ashman (1962) 2 QB 210 Quoted at page 40, paragraph G.b. of the case of Iyere Vs. Bendel Feeds Floor Mills Ltd. Note 9 above.

Thus, Article 17[80] made the carrier liable for damage sustained in event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the Aircraft, or in the course of any of the operations of embarking or disembarking. This provision according to a learned author[81] raises some essential requirements needed to established and ground liability in an aircraft accident; namely:-

a. The passengers must have been wounded or suffered any bodily injury [82]

b. The Accident must have arisen from an accident.

c. The accident must have occurred on board the aircraft or during the course of embarking or disembarking.

With due respect to the learned author, one fundamental requirement such as existence of a valid contract of carriage of goods or passengers between the carrier and the passengers is not included. This however raised the question as to when a passenger can be said to be on board of an aircraft?

A passenger can be said to be on board of an aircraft when he has initiated a contractual relationship between himself and the carrier in such a manner that he has offered, and the carrier has accepted to carry him to a particular destination for a consideration which is evidenced by an air ticket issued by the carrier. Accordingly a passenger who has paid his

80. Calistus E. Uwakwe, introduction to Civil Aviation Law in Nigeria, 2006, Aviation publishing and consultancy company Ltd, page 148.

ticket /charges to his carrier and entered the aircraft can be said to be on board of the aircraft.

COMPENSATION FOR NEGLIGENCE IN AIRCRAFT ACCIDENT

Negligence can be defined as the omission to do something which a reasonable man, guided upon those considerations which regulate conducts of human affairs would do, or doing something which a prudent and reasonable man would not do involved existence of a duty or some duty, breach of those duties which eventually result in damage suffered by the complainant. One may therefore be tempted to ask whether the relationship between the carrier and the passenger and that of the passengers and the Civil Aviation Authorities are cogent and sufficient enough to create a duty of care that can warrant a suit of negligence?

If answer to the above poser is in affirmative, one may further ask who is to be sued. Is it the carrier alone or both the carrier and the Civil Aviation Authority, or the carrier, the pilot, the manufacturer and the Civil Aviation Authority jointly?

On the part of the Nigerian Civil Aviation Authority, a body corporate with perpetual succession created by section 2 of the Civil Aviation Act 2006, it is glaring and patently clear on the face of the Act[82] that the Authority, members of its Board, its Director General, or any other employee of the Authority may be sued for any act done in pursuance or execution of any public duty under this Act or any law or enactment in respect of any alleged neglect or

default in the execution of any public duty under the Act which neglect or default result in to injury or damage to any body who has the capacity to institute an action. Although the Act did not specify whether the right to sue here is either civil or criminal, one can assume it is civil since Section

174 of the 1999 Constitution still retained and remained the overriding Section empowering the Attorney General to institute and prosecute criminal cases.

If however, the assumption is right in holding the view that a right of action is created and established by the Act against the Civil Aviation Authority, its management and employee in civil cases, the pertinent question then is what constitute the cause of action to make the intendment of Section 24 so relevant?.

To this end, the Civil Aviation Authority in Nigeria has free and unobstructed access to all civil aviation personnel, aircrafts, aviation facilities, to inspect aircrafts, aircraft manufacturers and maintenance facilities or organizations, training facilities (including simulators), and other appliances designed in air transportation, as may be necessary to enable the Authority to issue and grant Certificate of registration or approval to any aircraft, aircraft manufacturer and maintenance facility or organisation[83].

Similarly, the Authority has the power to issue, amend, vary, cancel, refuse and suspend any certificate and can validate and prescribe in such certificate terms, conditions and limitations as may be required in the interest of safety. It can also develop, issue and amend airworthiness directives, bulletins, orders, terms and conditions to bring such directives into conformity with the prevailing airworthiness requirements. Most importantly, the Authority has

the power to monitor and supervise the conditions under which an aircraft may carry passengers, mail and cargo or under which aircraft may be used for other purposes and can prohibit an

aircraft from the carriage of such classes of goods as the Authority may prescribe from time to time[84].

The aforementioned powers of the Civil Aviation constitute statutory duties imposed on the Authority, failure of which if resulted in to injuries to any person it may engender a civil cause of action of tort of negligence against the Authority. The statutory duty inherently imposed on the Aviation Authority can be equated to the statutory duty of care needed to ground or establish a case of negligence against the carriers. For example, the Aircraft Investigation Bureau that Investigated the accident involving the Aircraft registered as 5N-ATE owned by Network Aviation Services which crashed at Igbogbo Village, Ikorodu, Lagos State on the 16th June 2001, had it on record that the aircraft was originally owned by Astro Surveys Limited, Kano, Nigeria until 1993 when ownership of the Aircraft changed and the Network Aviation Services became the new owner[85]. According to the report, when the Aircraft was changing ownership, the "private category" on the original Certificate of Airworthiness ought to have been simultaneously changed from private category to multipurpose aviation category since the primary purpose of business of the new owner is not for aerial surveying profession but a multipurpose aviation business not including surveying profession. It therefore as it appeared on the report shown that the Network Aviation Ltd was actually operating the aircraft in the category which was in contravention of the authorization granted to the aircraft on

84. The Authority also has the power to regulate the required standard for air traffic services and prescribe air traffic regulations, rules and conditions on aircraft flight.

85. See Federal Ministry of Aviation, Accident Investigation and prevention Bureau Civil Aviation Accident Report on the

its certificate of Airworthiness. The implication of this is that the certificate of Airworthiness of 5N-ATE should have been re-issued when the aircraft was changing ownership in 1984[86], which necessitated the ownership name on the certificate of Registration to change from Astro Survey Ltd to Network Aviation Services Ltd. This is strictly necessary as every certificate of airworthiness specifies such a category as is appropriate for the use of an aircraft and every certificate is issued on the condition that the aircraft shall be flown only for the purposes indicated on its certificate of airworthiness. Thus, the 5N-ATE aircraft with a certificate of airworthiness displaying "private category" was completely wrong to be flying for the purpose of "Aerial work category" which is for hire and reward. In the same vein, a Nigerian registered aircraft, shall not fly if any part of the aircraft or its equipment as is necessary for the airworthiness of the aircraft has been overhauled, repaired, replaced or modified except a certificate of compliance has been issued that such maintenance has been performed on the aircraft and such certificate must be entered into the Aircraft logbook and signed by a licensed maintenance Engineer. However, and in deviation from above mentioned requirement, it was discovered on investigations that the 5N-ATE Aircraft was sometime in June 1999 taken out of Nigeria to either Colchester in United Kingdom or Accra, Ghana for extensive maintenance and there is no entry to that effect logged into the Aircraft logbook. It is therefore not certain whether the company that carried out the extensive maintenance and modification works on the aircraft was one of the maintenance

organization approved by the NCAA to work on Nigerian Aircrafts[87]. Notwithstanding this gravious statutory lacuna, the NCAA went ahead, and renewed the certificate of airworthiness for the aircraft for the period between February 2000 to February 2001. This is a gross contravention of the Nigerian Civil Aviation regulation concerning mandatory logbook entries.

86 The implication in this complexity is that, under the Aerial Work Category the owner of the aircraft does not have options of maintenance other than to follow the maintenance schedule as in accordance with the suggested aircraft manufacturer's prescription, or as pre-arranged with the Regulatory Authority, whereas under the "private category" the owner has the option to maintain these aircraft as minimal as pre-planned by the manufacturer, or opt for higher standard as prescribed for the Transport category.

In the light of foregoing breach of duties mandatorily provided by statutes on the part of the Civil Aviation Authority breach of which goes to the root of safety of the aircraft and air transportation, such breach of duties are weighty enough to constitute a cause of action against the Authority in favour of any passenger who may have sustained any injury or suffer any loss as a result of any aircraft accident caused or attributable to breach of the duties[88].

Consequently, it is not only neglect of statutory duty, but a gross manifestation of official incompetency for the Civil Aviation Authority to renew the certificate of airworthiness for the 5N-ATE Aircraft for the year 2000 to 2001 when, it is patently clear that the aircraft has been extensively overhauled and no record to such extent was logged on the logbook. Although this is a grave error on the part of the surveyors who are the employees of the NCAA but the NCAA can be vicariously liable

Accordingly[89]. Similarly, it is wrong and a sign of lack of prudence on the part of the Civil Aviation Authority to allow the 5N-ATE aircraft originally designated as private to be flying for an aerial service without re-issuing the certificate. This is also a breach of duty that engender liability and a cause of action against the Authority[90].

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87. The surveyors of the Civil Aviation Authority (NCAA) according to the Bureau report erred and are wrong by re-issuing the certificate of airworthiness to the carrier under the private category regime – see page 16 of the Report. see also the civil Aviation Regulation of 1965

88. See Section 24(1) of the Civil Aviation Act 2006.

89. See the case of R. O. Iyere Vs. Bendel Feed and Floor Mill Ltd (2008) 12 MJSC, 102 at 121 where the Supreme Court

On the part of the Airline carriers, there is no doubt that the quantum of duty of care placed on them in favour of their passengers is enormous in the sense that the contractual relationship between a carrier and its passengers is for safe carriage or landing at their various destinations.

It is obvious and unambiguous from the relevant provisions of the Civil Aviation Act 2006[91] that where injury or damage caused to any person or property on land or water by an article or a person in or falling from an aircraft while in flight, taking off or landing, damages in respect of such injury or loss shall be recoverable against the carrier or the owner of the aircraft, although where the aircraft so involved in the accident has been bonafide demised, let or hired out to any person or authority by the real owner, it is required that, it becomes necessary to establish that the Pilot, Commander, navigator or operative members in the aircraft are employees of the real owner, otherwise, the hirer shall be considered to be the owner for the purpose of liability in this respect. Although, the liability in this context is strict in respect of third parties who are not passengers to the carrier but the statutory liability according to the wordings of the Civil Aviation Act 2006 against the carrier is in tort

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90. See also the final Report on the accident to Sosoliso Airlines DC9 – 32 aircraft registered as 5N-BFD which occurred at Port Harcourt Airport on 10th Dec 2005, referenced FMA AIPB/424 of July 2006 which the Accident Investigation and prevention Bureau reported.

91. See Section 49 of the Act.

of negligence which has been painted a picture of strict liability. Most importantly, the law[92] made reference to the second schedule to the Act[93] with respect to the liability of the carrier in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage. Similarly, sub section 2 of section 48 of the Act having referred to third schedule of the Act pegged the liability of the carriers in respect of non-international carriage by air within Nigeria, irrespective of the nationally of the aircraft performing the carriage and that of the passengers on board of the aircraft.

For a better comprehension of this submissions, it is pertinent to highlight the intendment of the relevant portions of the modifications to the Conventions for the Unification of certain Rules relating to international carriage by Air (called montreal Convention 1999) attached as 2nd and 3rd schedules to the Civil Aviation Act 2006.

According to the Rule[94] the carriers are liable for damage sustained in event 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, and in respect of baggages upon condition 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 charge of the

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92. See Section 48 of the Act, 2006

93. i.e the Convention for the Unification of certain rule, relating to International Carriage by air signed at Montreal on 28th May, 1999 as amended from time to time.

Carrier[95]. Article 21 of the Montreal Convention (1999) makes the carrier strictly liable to its passengers if the claims of the passenger does not exceed 100,000 SDRS, but where the claim exceeds 100,000 SDRS, the Convention required the passenger to prove that the damage, loss or injury sustained by him was due and as a result of negligent act or other wrongful act or omission of the carrier.

This provision of Article 21 of the Convention needs to be studied in conjunction with paragraph 3 of section 48 of the Act which mandate the carriers to make advance payment of at least 30,000 US Dollars within 30 days from the date of an accident to the natural person or

such natural person who are entitled to claim compensation for the passenger. The consequence of the two distinct provisions is to create strict liability in tort against the carriers in favor of the passengers to the extent of the sum of N100, 000 SDRS[96] out of which 30,000 US Dollars shall be paid in advance. It is therefore established on the face of Article 21, Montreal Convention 1999 and sections 48 and 49, Civil Aviation Act 2006 that the carriers have been held strictly liable for their negligent act resulted from any aircraft accident to a certain extent, and can still be held liable to a larger extent by the passenger on proof of negligence. The next task therefore, is how to establish a wider claim of negligence against the carriers?

It has been held by the apex court that in negligence cases arising from accidents, the burden of proof falls on the Plaintiff who alleges negligence. This, according to the court is because negligence is a question of fact and not a question of law and it

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95. However, the carrier is exempted from liability if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage.

96 This submission is the researcher notwithstanding the provision of Section 48(3) of the Act that such payment shall

is the duty on he who asserts it to prove it by proving the particulars of negligence in his pleading and evidence.[97]

To this end, Article 21(2) Montreal Convention 1999 was so emphatic on the evidential burden of proof placed on the Plaintiff to the extent that a passenger shall not be able to hold a carrier or any other stakeholders liable for damages exceeding 100,000. Drawing Right except he can establish that the negligence or other wrongful act or omission of the carrier or its servants or agent are responsible for the accident that resulted in to the injury.

For instance Airframe and power plant manufacturers always prescribe how their products and other system components are to be maintained for the onward reliability and airworthiness of

the aircraft. For this reasons, air frames life is usually broken into series of periodical maintenance, inspections and reliability checks, such as A - check which comes up on every 50 hours, of operation B – checks, C-checks and D-checks at the accomplishment of certain number of flight hours or at a certain number of calendar years in service, which ever comes first upon expiration of time lag the aircraft must be torn down into its certain basic structure and be duly inspected or maintained in accordance with a prescribed standard. Similarly, the maintenance lives of the Engines are scheduled for periodic inspections and maintenance requirement, such as the time between overhaul (TBO), boroscope inspection of critical and sensitive dynamic parts within a turbine engine core[98].

According to AIB report reference No. 04/380[99] Textron Lycoming incorporation, manufacturer of the power plant of the crashed aircraft manufactured the power plant which consisted of 2 in – line Horizontally reproaching engines type 10-360-AIB6, which were fitted to the airframe of the aircraft in 1981. After the crash in year 2001, a detailed and thorough investigation conducted by the AIPB into the cause of the high temperature on No. 1 Engine as reported by the onset of the mishap after the Engine No. L – 21196-51A was removed from the wreckage and disassembled in the AIB's workshop at Ikeja; Lagos revealed that this type of Engine is normally due for total overhaul after operating about 2,000 hours in service, and according to the service instruction No. 1009 AQ, the manufacturer recommends that, in the alternative, the Engine be overhauled periodically every 12 calendar years interval, whichever comes first. The aircraft (as at the date of Investigation) which was 20 years of age only flew 528 hours in its life time, but it has never been overhauled in the last 20 years. Accordingly, the overhaul should have been performed since 1993, but this was overlooked as at when due and the certificate of airworthiness was symbolically renewed.

Further investigation on No. 1 Engine revealed the following discrepancies which in the opinion of the AIB's experts are contributory to the initial problems of the Engine overheat, namely:-

a. Intake Air Filter – The air filter, which ordinarily filters the atmosphere air in to the induction system of the Engine cylinders, was almost totally blocked by dirty and dust. This could account for partial loss of Engine power as power developed by any Engine under this condition would be grossly inadequate to sustain the flight.

b. The Engine Oil Cooler – The heart exchanger of the engine oil cooler's air-duct side was about 90% blocked by dirty and longtime dead insects such as bectles, moths, butterflies crickets, leaves and caked engine oil. From the report, it looked as if the heat exchanger had never been removed for cleaning since the original installation at the factory. The most annoying discovery as it appeared on page 20 of the report was that the aircraft logbook had it that the oil cooler was newly replaced and has only 54 flying hours before the crash. This claims was declared false, misrepresentation and unacceptable by the AIB on page 21.

c. Engine oil Pressure Hose – The Engine Oil pressure line from the oil cooler, which was carrying lubricating oil into the Engine accessory gear box was discovered having fibrous rupture and had snapped into two, due to depreciation from high oil temperature or mishandling by personnel. The two severed rough ends were then passed through the hose's canvass conduit. The engine oil was badly seeping through the woven canvass and evidence of such seepage was manifested around accessory gearbox area, that some accessories like magnetos, engine driven fuel pump, engine

99. On the accident involving P68C aircraft registered as 5N-ATE they crashed at Igbogbo Village, Ikorodu, Lagos state on 10th June 2001.

driven propeller were all sprayed with engine oil, which made everywhere looked messy and soggy with oil.

In the light of the aforementioned scenario, it is patently clear that the findings of the Accident Investigation Bureau indicted the carrier and the Civil Aviation Authority to the extent that the faults that lead to the accident were shared between the carrier as a corporate entity and its pilots on one hand and the staff or employees of the Nigeria Civil Authority on the other hand.

It is therefore on the authority of Alh. Kabiru Abubakar & 1or Vs. John Joseph & 1or[100] that all the basic ingredients needed to prove and establish tort of negligence are readily on ground in favor of an aggrieved passenger against the pilot, the carrier company and the Civil Aviation Authority respectively. However, it is pertinent to state that claim of negligence, in accident cases is not granted by court as a matter of course but the Plaintiff has the onus of proof lying on him to prove who was actually negligent, whose negligent act actually and substantially caused the accident by determining whether or not that person could have avoided the accident by the exercise of reasonable care[101]. Accordingly, it is the duty of the Plaintiff passenger to prove his case against the defendant on the scale of preponderance of evidence or in consonance with the statutory requirement of section 136 of the Evidence Act. In doing this, the Plaintiff (passenger) must establish that a cause of action is constituted in his favour by bundle or aggregate of facts which the law will recognize as giving him a substantive right to make the claim against the relief or remedy being sought.

100. (2008) 8 monthly judgment of supreme court, page 1 at 25 paragraph F – G.

101. See Shogo Vs. Adebayo (2000) 14 NWLR Cpt. 685) page 121. See also Nigilari Vs. Mother Cat Ltd (1999) 13 NWLR.

Thus, the factual situation on which he (the Plaintiff) relied upon to support his claim must be recognized by law as giving rise to a substantive right capable of being claimed or enforced against the defendant. i.e. the factual situations relied upon must constitute the essential ingredients of an enforceable right[102].

COMPENSATION IN CONTRACT

Air transportation is founded on the contract for transportation of goods and passengers, in which case goods or passengers are transported to other destinations or other countries either in container or ordinary cargo. Contract of International sale of goods are usually intertwined with other contracts under which goods or passengers are transported or exported e.g. the contract of insurance by which goods and passengers are insured.

In practice, it is not difficult to determine whether a contract is for carriage of goods, or passengers because the terms of contract usually contained provisions dealing with the place of delivery of the goods or passengers and the mode of transportation to the place of destination.

Also the rights and duties of the contracting parties vary greatly depending on their persons or private arrangement as to place, method of delivery and payment. The transport delivery document i.e. the Airway Bill or ticket plays an important role in the performance of the carriage contract. Usually, the shipper or his agent submits the shipper letter of instruction to the carrier for airway bill to be issued and the carrier acknowledges acceptance of goods for carriage by retuning the confirmed

102 See Hon. Justice Aloysius Iyorgyer Katsina – ALU JSC in the case of Chevron Nig Ltd Vs. Lonestar Drilling Ltd. (2007) 10 MJSC, page 103 at 116 – 117 paragraph. E – A.

original of the air way bill. The carrier has the right, in the presence of the shipper and airport security or customs Authority to check contents of the shipment submitted for his transportation.

The shipper equally has the right not to accept shipment if it cannot be inspected[102]. Where goods are insured under the air waybills, with the shipper providing proof of the value of goods with an invoice or declaration, the shipper pays premium and the amount of insurance and premium must also be entered in the air waybill. Where the shipper does not specify the route to be used or the air carrier to carry the goods in the air waybill, the carrier shall determine the route and the manner of shipment. It must be stated that the departure and arrival times as printed in the carriers time table is not considered as part of the contract of carriage. However, where there is cancellation of flight due to reasons beyond the carriers control such as force majeure;- a situation whereby a contract is rendered unperformable due to no fault of either party e.g weather conditions, war, strike of carriers organization etc. the carrier may delay, a derivative of a contract of international sale of goods, the main parties thereof are the shipper and the consignee (passenger). It is therefore settled that the relationship between the Air transport or Air carrier and his passenger or consignee is purely contractual and can be said to be governed by the general principles of law of contract breach of which can be remedied accordingly. This necessitated the decision of court of Appeal in Harka Air Services (Nigeria) Ltd vs. Emeka Keazor Ese.[104] the plaintiff, a legal practitioner was a passenger transported

on board the defendant appellant's aircraft TU 134 on a domestic route from Kaduna to Lagos on the said date of 24th June, 2005. While the Aircraft was landing at the Airport, Ikeja, Lagos, it violently hit the tarmac and caught fire hence the crash. As a result of the Accident the

103. The carrier may accept the goods with its values cleared for carriage, but the shipper must prove this value in form of document stating such value such as invoice or a declaration upon which a valuation charge shall be paid by the shipper for the declared value of goods and same shall be entered in the air Way Bill.

104. (2006) 1 NWLR Part 960, page 160 at page 184-185

Plaintiff/Appellant claimed to have sustained injuries and lost of his personal effect, hence the Plaintiff suit against the defendant before the Federal High Court, Lagos claiming the sum of five Million Dollars. Although judgment was entered in favor of the Plaintiff/Respondent in a lesser sum, the court of Appeal held interadia that:-

> *It is not in controversy that the action or claim before the lower Court was based or predicated on the contract of carriage between the Plaintiff and the Defendant Airline company.*

It is therefore the researcher's view that the relationship between passengers and air transport carrier is contractual in nature and all elements, terms and conditions of ordinary contract are attributable to the relationship. To this end, the most pertinent question is when can we say the contract of Air carriage has been breached, particularly when there is an accident and what are the cause of actions through which an aggrieved party in the contract can pursue to remedy his grievances?. It is a common knowledge that a contract is generally breached when one of the parties thereof has broken any of the terms of such contract as a result of which a party sustained loss or injury[105]. It can therefore be inferred that the ultimate end in the

contract of air carriage stem out of the duties and obligations of the carrier particularly with regards safe delivery of passengers and luggages which are subject matter of the contract.

105. See Omega Bank Plc Vs. OBC Ltd (2005) 2 MJSC, 26 at 48 where the Supreme Court held that there are three essential ingredients of a valid contract namely; an offer, an unqualified acceptance and a consideration.

Thus, loss of goods, death or any bodily injuries suffered by a passenger as a result of an accident which occurred while on board of aircraft operated by the carrier can be attributed as breach of safe delivery of the affected passengers or their goods which is envisaged and considered the ultimate end result of a contract of air carriage.

It is trite however, that once a party to a contract establishes to the satisfaction of a court of law that the other party has committed a breach of contract, the most common claim is that for damages and certainly it is the most readily granted type of remedy granted by courts[106].

For an injured or aggrieved person to commence and succeed in an action for breach of contract of air carriage, such a person must prove and establish that there is a valid and prima-facie contractual relationship between him and the carrier being sued as Defendant. i-e. There is offer, acceptance and consideration[107]. Though it is expected that an acceptance must unqualifiedly accept a particular offer, an offer can be identified as a definite undertaking made with the intention that it shall become binding on the person making it as soon as it is accepted by the addressee of the offer[108].

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106. Supra at page 63.

107. See Articles 20 & 21 Warsaw Convention.

108. See the case of panalpina international transport Vs. Densil underwear (1981) 1 Lyoyds Rep 187, where it was held that 19 days was not reasonable time in which to deliver a Cargo of Shirt by air from the United Kingdom to Nigeria

A validly contracted contract of air carriage can be breached in any of the following circumstances:-

b- **DELAY:** An air carrier is liable for damage occasioned by delay in the carriage by air if passengers, luggage or goods do not arrive at the Airport of destination within seven days of the time when they should have arrived under the provisions of the Convention and give rise to a cause of action except where the carrier can prove that he has taken all necessary measures or there was a contributory negligence on the part of the passengers[109]. Similarly, where the delay is caused by weather condition despite all diligence on the part of the carrier, the carrier will not be liable[110].

b- **LOSS OR DAMAGE OF GOODS:** The Air carriers are liable for damage sustained in event of destructions or loss of or damage to any registered baggage or any goods if the occurrence which caused the damage so sustained took place during the air carriage[111]. it could be seen from the wordings of the relevant Conventions and protocol that carriers' liability as to loss or damage of goods can only arise if the loss or damage occurs during air carriage. An air carriage therefore can be defined as the period during which the cargo is in charge of the carrier whether in an Airport or on board of aircraft[112].

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109. See Article 18(1) of the Warsaw Convention and that of thettaque protocol both to which have similar wording as well as Article 18(2) Montreal protocol and Article 18(1) Montreal.

110. See Article 18(2) Warsaw Convention and the Haque protocol.

111. Bart V. British West Indian Airways (1967) 1 Lioq ds Rep. 239

The period of carriage by air, according to Article 18(3) Montreal Convention "does not extend to any carriage by land, sea or by inland water way, performed outside an airport, if however, such carriage takes place in the performance of a contract for carriage by air. For purpose of loading, delivery or shipment, 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, substitute's 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.

Where damage to goods occurred while they are in charge of the carrier, but not at the airport, the carrier is not liable[113]. Also, where damage occurs to goods at the airport but nor in charge of the carrier, the carrier is not liable.[114] for a carrier therefore to be liable, there has to be cogent proof that the damage to the goods occurred while they were in charge of the carrier at the airport.

c. **LOSS OF LIFE:** No method of transport is absolutely immune from incident leading to death or serious injuries to passengers. Although the prime and ultimate objective of air transport or air carriage is the safety of the passengers and goods subject matter of air carriage. An accident leading to loss of life, particularly if the accident is attributable to any negligent act on the part of the carrier or its agent can be described as an act of breach of contract of air

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113. F. Adeyemi, Nigerian Insurance Law, (1998) Dalson Publication Ltd, Lagos, Page 25.

114. The first and second parties to an Insurance contract are the Insured and the Insurer respectively. Any other person [illegible] carriage with respect to safe carriage and landing of the affected passengers. The carriers' liability regarding death or bodily injury or wounding of a passenger, according to Article 17 of the Warsaw Convention, is only established if the accident which caused the damage so sustained took place on board the aircraft or in the course of any operations of embarking or disembarking.

Although, the relevant provision of Warsaw Convention does not define what constitute "bodily injury" it seems that to satisfy this condition, the clamant must satisfy the court that the passenger died or suffered physical injury from the accident thus, psychological disorder, emotional distress or trauma may in the absence of medical evidence as to

physical damage to the brain cell or any other part of the body not be sufficient to ground the carrier liable under this provision for bodily injury.

COMPENSATION IN INSURANCE

It has now become inevitable that in the course of daily social interactions, the pursuit of a person's interest is bound to be in conflict with those of others. Such conflicts may give rise to losses or damage in form of bodily injuries, loss of or physical damage to property, financial loss or damage to reputation. The law on liabilities of individuals limits the scope of conduct which can be tolerated by society, hence the legal liability is concerned with the redistribution of losses so that losses are borne by those who caused them[115].

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115. See Thomas Chukwuma Makwe Vs. Chief Obanna Nwukor (2001) 6 MJSC page 179 at 188 – 189 where the Supreme Court patently held that a stranger to a contract can neither sue nor be sued on the contract even if the contract is made for his benefit.

Legal liabilities such as that of an Air carrier to his passengers therefore is insurable in form of third party insurance. Although such a policy is for the benefit of third party, nevertheless the third party cannot generally speaking, directly enforce the contract as a result of the principle of Common law under which a person who is not a privy to a contract can neither sue to assert a right, nor be subjected to any obligation under the contract. A third party therefore is a stranger or an alien to the contract of insurance who cannot enforce the contract by himself even though such a contract was made for his benefit[116]. However, the doctrine of privity of contract according to the supreme court decision admits a number of exceptions which includes the case of a contract made by an agent on behalf of an undisclosed principal, who again as a general rule is entitled to sue and liable to be sued on such a contract[117]. Though under contract of insurance, a tortfeasor or contracting party may pass to an insurer the damages he is obliged to pay and thereby save himself the financial consequences of his tort or breach of contract. To this end, the Civil Aviation Act 2006 required that "any carrier

operating air transport services to, from or within Nigeria, or aerodrome operator, aviation fuel supplier, or any provider of ground handling services, or provider of such other classes of allied services as the Authority may from time to time determine in writing shall maintain adequate insurance covering its liability under the Act and also its liability towards, compensation for damages that may be sustained by third parties for an amount to be specified in regulations made by the Authority[118].

This requirement of Insurance cover by the air carrier is a condition precedent upon which air operators are required to provide a quarterly report to the Civil Aviation Authority evidencing that such adequate insurance is maintained and that all conditions necessary to create an obligation on the insurer to provide indemnity in the event of a loss have been fulfiled[119].

In the light of the principle of privity of contract, it becomes expedient for the researcher to herein examine how an Insurance Company (who is not a party to a contract of air carriage) can be held liable by the passenger in a 3rd party proceeding to enable the passenger lay claim to the Insurance claims put in place by the carrier in possession of the Insurance Company?.

Applying this common law doctrine of privity of contract to Insurance contract, it is patently clear that a 3rd party cannot maintain a claim in law or equity against an insurance company and cannot join such insurance company as a party to any claim against the insured (the air carrier). Although the Supreme Court in a decided case[120] appraised the provision of Section 10 of the Motor Vehicles (Third Party) Insurance Act Cap. 126, Laws of the Federation of

Nigeria 1990 and held that the Insurance Company cannot be sued nor joined in a suit against the carrier, but as a saving ground, the Insurance Company can be sued by a way of 3rd party proceeding based on contact of indemnity.

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119. See Sub-Section 3 of Section 74 of the 2006 Act.

120. Andrew O. Ajufor Vs. Christopher Ajarbor & ors (1978) 6.7 SC page 39 at 52.

Another conflicting provision on this point of law is Section 68(1) of the Insurance Act No. 2 of 1997 which provides:- "Where a third party is entitled to claim against an Insured in respect of a risk insured against, he shall have a right to join the Insurer of that risk in an action against the Insured in respect of the claim".

Notwithstanding this provision, legal practitioners representing third parties are still finding ways of convincing judges of reasons why an Insurance Company can be joined by a third party. Each attempt at joining an Insurance Company by a Plaintiff third party always meet brick wall as Courts often refuse the application on the ground that it was not necessary to join the Insurance Company before the said Insurance Company could be made liable to indemnify the respondent[121]. All that was required, according to the Court, was to give the Insurance Company due Notice of the proceedings as required in the Insurance Policy[122].

Aviation Insurance is essentially connected with carriage of both goods and passengers. The practice of aviation Insurance largely follows the same law as marine, hence the proposal forms are not used for aircraft Insurance, but the detail of risk proposed are entered on a sheet which is passed round the market. Each underwriter takes a share and the leading underwriter negotiates the Insurance and arrive at a decision which is binding on the other participating underwriters.[123]

121. Ekerebe Vs Efeizomor (1993) 7 NWLR, part 307, page 588.

122. Section 73 (a) of the Insurance Decree 1997 which stipulates that no sum shall be payable by the Insurance Company under the provision of Section 73(1) in respect of any judgment unless before seven days after the commencement of the proceedings in which the judgment was given the Insurer has notice of the proceeding.

The main types of Aviation Insurance are comprehensive cover policy, personal Accident Insurance, Cargo Insurance, Loss of Use Insurance for Aircraft Hulls. Airport Liability and Products Liability Insurance.

The comprehensive Insurance covers accidental damage to aircraft including damage by fire, legal liability for injury or damage to persons or property in the ground and liability to passengers for personal injury or damage to their personal effect. The personal accident Insurance usually covers air crew, pilot, the operator, the air hostess, aircraft doctors and engineers. Passengers make individual arrangements either for a contract for each night or by means of personal accident policies which cover such passenger while on board the aircraft or on the ground[124].

Cargo Insurance covers safety of the goods either on each consignment or series of consignments. This type of Insurance can be effected either under a declaration policy or open cover[125]. The loss of use of Aircraft Insurance covers consequential loss such as loss of revenue where an aircraft is laid off following an accidental damage[126].

124. For instance in America or United Kingdom, there are slot machines from which tickets for an Insurance are obtainable which gives the passengers the opportunity to obtain cover against fatal accident. No such opportunity in Nigeria, but the Insurance Companies are ready to accept such policy wherever an offer is made.

125. Under an open cover, an Insurer may agree in advance to cover consignments all goods up to an agreed limit per aircraft for specified classes of goods. Under a declaration policy, a fixed sum is insured in advance (say N500,000) and the balance of outstanding cover being reduced by the amount of each goods declared.

The researcher's concern here is comprehensive cover where liability to passengers for personal injury, death, or damage to their personal effect are legally protected and guaranteed which consequently engendered third party claim. The researcher further hold the view that Section 49(2) of the Civil Aviation Act 2006 needs to be read jointly with Section 74(1) of the same Act. The cumulative effect of the two Sections therefore is suggestive of the fact that there is a valid third party's right against Insurers of an accident aircraft in Nigeria particularly when the air carrier involved in the accident fails to comply with the provision of Section 49(2) and other relevant provisions of the Act.

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5.1 Findings

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However, notwithstanding the statutory predicaments in the doctrine of privity of contract which prevent the passengers (third party to the Insurance contract between the Insurer and the Insured) from enforcing contract of Insurance against the Insurance company, it is still the researcher's view that the third party can now sue the Insurance Company in respect of the claim upon fulfillment of the requisite condition of constructive Notice of pendency of the suit between the third party and the Insured and the Notice to the Insurer of the third party's Intention to bring an application to join the Insurance Company in the pending suit[81].

6.8 COURT JURISDICTION

Aviation is on the exclusive legislative list of the 1999 Constitution which brings the power and jurisdiction to legislate on Civil Aviation within the sole and exclusive ambit of the National Assembly, and the power to control and manage same within the purview of the Federal Government to the exclusion of any other tier of Government[82.] Jurisdictional conflict between the State and Federal High Courts having been resolved by Decree 107 of 1993 which transformed into Section 251 of the 1999 Constitution, the Federal High Court has Jurisdiction to the exclusion of any other Court in Civil causes and matters relating to Aviation and safety of Aircraft[83.] The cumulative effect of Section 251 (i) (k) and item No. 3 of the exclusive legislative list of Second Schedule to the 1999 Constitution raised no dispute as to the fact that it is only the Federal High Court that has Jurisdiction to hear and determine any suit or claim arisen from the contract of

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81- See the Insurance Decree of 1977 and the case of Lion of Africa Insurance Company Vs. Anuluoha (1972) NCLR, 74.

82. see item No. 3, exclusive legislative list, second schedule of the 1999 constitution, where Aviation including Airports, safety of Aircraft and carriage of passengers of goods by Air were listed.

83. See Section 251 (I) (k) 1999 constitution federal Republic of Nigeria.

carriage between a Carrier on one hand and a passenger or his relations on the other

hand.

Consequently, the relevant provisions of the Federal High Court Rules 2009[84] required claims for damages for breach of duty, whether contractual, statutory or otherwise and damages for personal injuries or wrongful death of any person to commence by way of a writ of summons to be supported

by statement of claim, copies of all relevant documents to be relied on at the trial, list of non – documentary exhibits, list of witnesses to be called and written statements on oath of witnesses. Consequently, an aggrieved passenger in an air craft accident can commence a suit by a way of writ of summons at the Federal High court.

6.9 DEFENCES AVAILABLE TO AIR CARRIER

The Warsaw Convention[85] availed the carrier opportunity to put up a defense of "Necessary Measure" where a Carrier can prove that he or his servants and agents took all necessary measures to avoid damages or that it was impossible to take such measure. For a Carrier to avail him of this defense, he must prove and establish the cause of the loss or damage[86.] The provision also avail the Carrier this defense if there is proof that those damage were caused by negligence in pilotage or navigation and that all necessary measures were taken to prevent damage. In practice however, this defense is rarely applicable because of the likely hardship it can pose to the passengers.

85. See Article 20 and 21 of Hague Protocol.

86. The word "Necessary Measure has been interpreted by case Law to mean reasonable necessary measure, see Grein vs. Imperial Airways (1937) I. K .B 50

Similarly, where the carrier can prove that there has been contributory negligence[87] he can rid himself of the liability either wholly or party. In this instance, the carrier has the Onus to prove that the Plaintiff was negligent and that Negligence caused the loss or damage.

Thus, with respect to damage and loss of cargo, the Conventions exonerated the Carriers[88] if the carrier can prove that the destruction, loss or damage to the cargo resulted from one or more of the following:-

a. Inherent defect, quality or vice of that Cargo.

b. Detective packaging of that Cargo performed by a person other than the carrier or its agents or servants.

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.

In the researcher's opinion, these defenses shifted the burden of proof primarily on the Plaintiff to the Defendant (carriers) who now have the onus of proving the existence of any of these defenses and establish nexus between them and the Plaintiff's cause of action. Section 140(1)(b) of the Evidence Act, CAP 112, Laws of the Federation 1990 shifted this onus of proof to the defendant being the opposite party that wish to setout a defense by adducing evidence of some other facts which are not within the knowledge of the Plaintiff[89]. To raise a defence in respect of claim of damage caused by delay, Article 19 Montreal Convention provides that:-

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87. See article 21 Warsaw Convention.

88. see Article 18 (2) Montreal Convention. The same defenses are provided for under article 20 and 21 of the Warsaw Convention and the Hague Protocol.

> "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 its servants and agents took all necessary measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures".

It is pertinent to state however, that under the Montreal Convention and Montreal Protocol, the defense of contributory negligence is available to the carrier regardless of whether the claim is for loss or damage to cargo or delay[90].

6.10 CONTRACTUAL DEFENSES

The Warsaw Convention forbidden a carrier from contractually accepting or limiting its liability below the statutory limit laid down in the convention. Accordingly,

> "Any provision tending to relieve the carrier of liability or to fix a lower limit than 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" [91.]

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89. Section 139 of the Evidence Act placed the burden of proof as to any particular fact on that person who wishes the Court to believe in its existence.

90. Article 20 Montreal Convention and Article 21 Montreal Protocol.

91. Article 22 Warsaw Convention.

The Montreal Convention, however re – introduced the original version of Article 23 and introduced new provisions to the effect that nothing contained in the Convention shall prevent the carrier from waiving any defenses available under the Convention, or from laying down conditions which do not conflict with the provisions of the Convention.

Consequently, this provision has clearly brought the matter under private contractual terms particularly where they are not strictly governed or provided for by the Convention. Existing case laws equally recognized validity of contractual terms which are not inconsistence with provisions of the Convention[93.] It is a question of fact that the Onus is on the carrier to establish that the limited terms of liability have been properly and constructively brought to the knowledge and attention of the Plaintiff.

6.11 LIMIT OF LIABILITY

Carriers have a right to limit liability under the Conventions. Article 22 of the Warsaw Convention permits carriers to limit their liability to 250 Francs per kilo; Gold Francs are converted to Standard Drawing Right's (SDRS) at the rate of 15.075 Gold Francs per SDR which gives a limitation amount in SDR as 16.58 SDR'S per kilogram. SDR's can be converted into any other currency through the exchange rate.

A carrier's liability however may be increased beyond the limits laid down by Article 22, if consignor at the time of delivery of the goods to the carrier makes a declaration of value, and pays the supplementary sum where such is required.

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92. It provides that paragraph 1 of this article shall not apply to provisions governing loss or damages resulting from the inherent defect, quality or vice of cargo.

93. See MDSI vs. FEDEX (2003)CCAP, where the British Columbia Court of Appeal held that a contractual provision could amount of the special declaration of value.

Although, it is not statutorily required, in practice, most Air Carriers require that the declaration must be on the Air waybill or in any other particular form. The declaration envisaged by this provision must be actual declaration not a verbal statement of value made on phone[94].

Where a declaration is made, the Carrier is liable to pay the declared sum unless the carrier can prove that the declared value is greater than the actual value of the goods, in which case the carrier will be liable only for the actual value. It is believed that a carrier may avoid effect of a declaration of value by a properly constructed term limiting the amount a carrier can declare.

With regard to loss of limitation, the Warsaw Convention and Hague Protocol provided that the carrier can lose its rights to limit liability, while the Montreal Convention and Montreal Protocol declared that such right to limit liability cannot be lost simply because the right to limit is absolute and statutory. Article 25 of the Warsaw Convention declared to the extent that a carrier will not rely on the provisions of the Convention which limit or exclude liability if damage caused to goods was as a result of the carriers "Willful misconduct".

Article 25 of the Hague Protocol is to the effect that a carrier will lose its right to limit if it can be proved that damage resulted from an act or omission of the carrier, its servant or agents acting within the course of their employment was done with intent to cause damage, or recklessly and with knowledge that damage would probably result[95].

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94. Corocraft vs. Pan America Airways (1969) Q.B 616.

95. Most decided cases where carriers are declared not entitled to limit their liability are cases involving theft such as SWISS Bank Corp. vs. SWISS Air (1988) FC71

Onus is always on the Plaintiff not only to prove how the loss or damage occurred but to prove the state of mind of the persons who caused the damage to the extent that the person knew that damage would probably result from the acts. However, and considering the facts that Onus on the Plaintiff is enormous compared with little information within the Plaintiff's disposal, Court resulted to liberal use of inferences in such cases. In the case of Connaught laboratories vs. British Airways[96], the Plaintiff's cargo of vaccines was damaged because it was left on the tarmac rather than being placed in a refrigerated area. The judge noted that this may happen due to mere inadvertence or that a relevant person might have thought that no damage would come to the vaccines if not refrigerated. He also noted that it could have been that the relevant person knew there was a risk or damage but simply did not want to bother storing the Cargo as directed.

The Judge therefore resolved the matter by drawing an adverse inference from the carriers failure to explain exactly how the loss came about. The ratio in this case is to the effect that notwithstanding that the Plaintiff has the burden of proof; the carrier is expected to present before the Courts all available evidences of facts explaining how the loss or damage occurred. Failure to provide such information which is ordinarily within the exclusive disposal of the carrier may result into an adverse inference been drawn against the carrier hence loss of right to limit under the Warsaw Convention and the Hague Protocol.

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96. (2002) O.J 3421 quoted in Hadiza Ibrahim Auyo International Carriage of goods by Air Laws and practice. A research project submitted to the post graduate school, Faculty of Law, Bayero University

Kano in partial fulfillment of the requirement for the award of Masters in Business and commercial Law, 2005.

6.12 LIMITATION OF TIME

In event of delay, loss, injury or death in the process of carriage by Air, the Aviation system like any other system provided for the time limit within which an action either civil or criminal can be instituted. There is equally room for pre – action notice which constituted a condition precedent for the commencement of action in Aviation cases.

According to the Warsaw Convention[97] receipt by a person who is entitled to delivery of cargo without any complaint is prima – facie Evidence that the Cargo has been delivered in good condition. Article 26(2) of the Convention further provided to the effect that in event of damage, the person entitled to delivery must complain to the Carrier within seven days after discovery of the damage or from receipt in the case of checked baggage, and Fourteen days from the date of receipt in case of Cargo. In event of delay, such a written complaint must be made within Twenty – One days from the date on which the baggage or Cargo have been placed at his or her disposal.

One may argue that the aforementioned provision only placed the statutory requirement of pre – action Notice on carriage of Cargo, damage or delay in such delivery. One can argue further that carriage of passengers, loss, injuries or delay thereof are not covered by this mandatory provision.

However, the wordings of Article 35 of the Convention are general in nature to contemplate carriage of both passengers and luggages or Cargo. It required a court case to be instituted within a period of two years from the date of arrival at the

97. Article 26 (1) of the Convention.

destination, or from the date on which the Air craft ought to have arrived, or from the date on which the Carriages stopped.

In conclusion, cause of action in an Aircraft accident once arisen can be established against a carrier by the passengers, a relation or Estate of deceased passengers in contract, tort and insurance. This is in line with the current legal regime envisaged by relevant provisions of Civil Aviation Act 2006, International Conventions and Protocols which recognized the relationship between a carrier and its passengers as contractual in nature.

In the same vein, tort of negligence is a common Law liability whose characteristics of duty of care, breach of the duty and damage caused as a result of the breach can be found in the relationship between a carrier and its passengers particularly where there is accident.

With respect to insurance claim, even though the law is not on the side of aircraft accidents victims to lay direct claim against the insurance company with regards to the payment due to an airline company responsible for the crash, it is open to the passengers to institute a 3rd party action.

7.0 CHAPTER SEVEN

7.1 CONCLUSION AND RECOMMENDATION

7.2 CONCLUSION

Carriage by Air is principally governed by provisions of International Convention. The domestic laws on Aviation are fashioned in tune with the International Conventions and Protocols. These Conventions and Protocols are mostly concerned with the documents of carriage and the liability and responsibilities of carriers towards their passengers.

Although, in air carriage, the liability for loss, damage or delay lies on the carrier who is responsible for the safety of passengers who presented themselves for carriage and the goods delivered for transportation. It becomes unsettled whether such liabilities arisen and engendered cause of action against the Carrier in contact, tort or insurance[2].

In Nigeria, the current Legislation on Aviation that takes cognizance of current trends on Aviation sector is the Civil Aviation Act 2006 which domesticated and accommodated host of the International Conventions and Agreements on Aviation particularly carriage by Air[3].

Aircraft accident is a common trend and an inevitable factor in air transportation locally and internationally. It is therefore a resolved question of law and facts as to how liabilities of the carriers

and the Civil Aviation Authority can be established by passengers who sustained injuries or loss in an accident.

1- Such as Warsaw Convention 1929, Montreal Convention 1999 etc.

2- R.O. Omosun, LLB (Hon) Nigeria's Journal of Aviation Development issue.

3- Government Notice No.45, Volume 93, Federal Government of Nigeria Official Gazettle 15th November, 2006.

With respect to law, Section 71 (1 & 2) & and 48(1, 2 & 3) Civil Aviation Act 2006 cumulatively set out a compensation scheme and held thes carriers liable to pay such compensation to the passengers who incurred a loss or sustained injuries as a result of Aircraft accident claimed to be responsible for by the carrier. This compensation is Statutory and poses no problem once the passenger or his Estate are not willing to claim beyond the specific compensation. The grey area is how to establish a higher and commensurable civil claim against a carrier outside the strictly statutory limits.

It is therefore settled that a passenger who decides to go for a higher or commensurate claim has the constitutional right to so do; such a passenger can establish breach of contract of carriage against the carrier. He can as well establish tort of negligence on the part of carrier for injuries so suffered by him, hence the cause of action in contract and tort[4].

The burden of prove on such passenger is on the preponderance of evidence as the basic and statutory requirement in civil cases in Nigeria[5]. What passenger therefore required to establish to enjoy cause of action against a carrier is to establish that there is a contract of Air Carriage between

him and the carrier and that the carrier upon his offer has agreed to carry him/her from one destination to another, and that the accident that gave rise to the claim occurred in the cause if embarking or disembarking of Aircraft operated by the carrier[6].

Although the enabling Conventions and indeed the Civil Aviation Act 2006 explicitly

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29. Particularly where the passengers claim beyond the 100,000 special drawing right as set out in Article 21 of the Warsaw Convention.
30. Veepee Ind. Ltd. vs. Cocoa Ind. Ltd. (2008) 7 MJSC, page 125.
31. See Article 17 of the Warsaw Convention which set out.

provided for monetary compensation scheme in event of lost of life, or injuries caused to a passenger as a result of an Aircraft accidents, it further gave latitude to the passenger who is desirous to claim higher damages subject to the ability of the passenger to proof his claim on the preponderance of evidence.

To establish liability of a carrier in an aircraft accident,its has been established that the passenger must establish to have been wounded or suffered bodily injury, and the injury must have arisen from an accident and the accident must have arisen on board of the aircraft[7].

It is also established that the liability of the carriers to their passenger is to the extent of the sum of 100,000 US Dollars payable to victims or their relations in event of death, out of which sum ₦ 30,000 US Dollars is expected to be pad to the relation of the affected passenger within one month of the accident[8]. The liability however become not strict when the passengers or the relations decided to pursue higher claims where they will be required to proof their cases while the carrier too would have opportunity to plead and avail itself of the available defenses to exonerate itself from the claim.

The inadmissibility of the Report of the Accident Investigation Bureau, a statutory body created by the civil Aviation Act 2006 in Civil Litigation by passengers[9] has been established in the researcher's view to be unconstitutional and violated sections 6 and 236 of the 1999 Constitution. Section 29(14) of the Civil Aviation Act is further seen to be in conflict with Sections 109 and 91 (1, 2, 3, & 4) of the Evidence Act

32. See Calistus E. Uwakwe, introduction to Civil Aviation Law in Nigeria (2005).
33. See Section 48 of the Civil Aviation Act 2006.
34. Section 29 (14) of the 2006 Aviation Act.

notwithstanding that both Acts are Acts of the National Assembly. This inadmissibility of the report is therefore in the researcher's view a calculated act to restrict the passenger to the compensation scheme provided in the Civil Aviation Act and it is indeed unconstitutional[10].

The research work also appraised wording of section 49 2(G & B) of the 2006 Civil Aviation Act[11]. and Section 48(1 & 2) of the same Act and 2nd schedule thereto[12]. and concluded that an injured passenger in an aircraft accident or his relations can sustain a cause of action either in contract or tort of negligence against the carrier or any other party (Personal or corporate). The research work appraised section. 24(1 &2)[13] and section 30 (2) F & H[14] and concluded that apart from the carriers who have privity of contract with the passengers and can be sued accordingly, the Civil Aviation Authority can as well be sued for negligence of their statutory regulatory duties to ensure that aircrafts or their operators strictly comply with every safety measures. Although, the law on this score has not been tested judicially, but it is patent on the face of the statutory provisions that the Authority can be sued accordingly.

The Accident Investigation Bureau being an autonomous statutory body is given a wide and expansive power needed to operate and independently conduct Investigations into any aircraft accident in Nigeria[15]. This Independent autonomy is

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10. Inconsistent with Sections 6 and 236 of the 1999 constitution.
11. Which talk of damages in tort.
12. Which make provision for damages in breach of contract of air carriage against the carrier.
13. Which required any civil action against the Civil Aviation authority for any Act done in pursuance of the Act and further required one month pre notice to the Authority before commencement of any suit?
14. Which empowered the Civil Aviation Authority to fashion out conditions under which passengers and goods can be carried by air and the aircrafts can be used for commercial purposes?
15. See Section 29 (1, 2, 3 and 4) of the 2006 Act.

reflective in some of its reports reviewed in this research work[16]. notwithstanding that the autonomy is baseless if the Report is inadmissible in a court of law.

RECOMMENDATIONS

However, and not withstanding the statutory compensation scheme and legal right of passengers to claim higher damages, the law relating the relationship between an air carrier and its passengers in event of accident is still not all encompassing and still remain unfavorable to the passengers. Consequently, the researcher therefore recommends as follows:-

1. Air transport operation inherently involved more risk than any other form of transportation particularly to the passengers, hence the need to inject the highest form of professionalism and the maximum sense of security therein. Consequently, there is no doubt that the business is highly capital intensive, yet less consideration should be given to financial capacity of Applicant for Air licenses and permits to operate Air transport, but rather serious consideration should be attached to professional experience, past and present in the field of Aviation transportation by the Applicants.

To this end, it is the researcher's opinion that Section 33 of the Civil Aviation Act 2006 be reviewed to accommodate stiff penalty for officials of Government who are in charge and responsible for approval of such licenses if they are found wanton in any approval so granted for air transport operation. Accordingly,

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16. For instance, the report on the accident to the Network Aviation services par tanavia p68c aircraft registered as 5N – ATE that crashed at Igbogbo Village, Ikorodu, Lagos state on 16th of June 2001 and that of Sosoliso airlines DC 9 – 32 Aircraft registered as 5N – BFD at Port - Harcourt International Airport on 10th December, 2005.

government officials including the Aviation Minister who are involved in the grant and approval of licenses and permits to air transport operators should be held liable and responsible for negligence of duties any time it is discovered that such licenses or permits ought not to have been granted abinitio.

This position if upheld will strengthen the sense of honesty or professional uprightness of concerned government official who will ensure that only operators who withstand the statutory requirements and professional competence are granted the licenses or permits.

2. Although Section 137 (1) Evidence Act Cap 112, Laws of federation 1990 accommodate shifting of the burden of proof in civil cases by putting the Onus on a party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. The burden of proof on the scale of preponderance of evidence is still on the Plaintiff. The opulent task on the Plaintiff is the task of proving to the satisfaction of Court that the carrier was liable and responsible for

the accident that caused the injuries or loss particularly when evidence relating to such facts, oral or documentary are squarely within the sole disposal of the air carriers and their allies. For instance, a document needed to establish the current maintenance status of the aircraft. Which may be in the custody of the carrier. Although, the Plaintiff may use cumulative affects of Section 98 and 219 of the Evidence to compel the production of the documents but where the Defendant refuses to produce the documents, Section 222 of the Evidence Act is not helpful to the Plaintiff. More devastating in this respect is the official report of the Accident Investigation Bureau on aircraft accident which ordinarily is a public document within the meaning of Section 109 of the Evidence Act being a document forming the Acts or records of the Acts of a Sovereign Authority or official body in Nigeria. Being a public document therefore, the document must be opened to the public for use on application for its certified true copy especially for the purpose of civil litigation arisen as a result of aircraft accident which the report investigated. However, Section 29 (14) of the Civil Aviation Act 2006 patently and categorically rendered the document inadmissible in evidence to form a basis of liability in any criminal or civil proceedings.

The question begging for judicial resolution is the statutory conflict between Section 29 (14) of the Civil Aviation Act 2006 and Section 91 (1), (2), (3) & (4) Evidence Act both of which are Acts of the National Assembly.

Section 91 of the Evidence Act, set down, the conditions precedent for admissibility of documentary Evidence in civil cases. Accordingly, in any proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall on production of the original document be admissible as evidence of that fact if;

a. The maker of the statement had personal knowledge of the matters dealt with by the statement.

b. Where the document in question is or forms part of record purporting to be continuous records, or the maker made the statement in the performance of a duty to record

Information supplied to him by a person who had, or might reasonably be supposed to have personal knowledge of these matters.

c. If the maker of the statement is called as a witness in the proceedings.

The Court may still admit the document in evidence even if the maker is not called as a witness especially, if it is shown that the maker is dead, unfit by reason of bodily or mental condition, beyond the sea or all reasonable efforts to secure his attendance has failed. It is patently clear that report of Accident Investigation Bureau (AIB) copiously met the requirement of Evidence Act to render same admissible in evidence in a trial against air carrier for the purpose of establishing the actual cause of accident, yet Section 29 (14) of the Civil Aviation Act 2006 rendered the document inadmissible.

It is the researcher's opinion therefore that section 29 (14) of the Act be amended to be in tune with the relevant provisions of the Evidence Act and to enable Plaintiffs in Aviation cases to make use of same in effectively prosecuting their cases.

3. Aviation Ministry should be declared a profession ministry like that of justice, Health and Education, so that only experts in the field of Aviation are appointed as Minister of Aviation since the 2006 Act required the minister to advise, give opinion and approve professional opinions on Aviation and Allied matters.

4. Continuing mandatory Education Unit should be established at the Aviation College Zaira for the purpose of mandatory retraining of the pilots and other professionals in Aviation Industry to keep them in tune with current global trends in the sector. This training and retraining exercise in the opinion of the researcher will go a long way in enhancing and refreshing the spirit of professionalism particularly with respect to accident Management/Manipulation he pilots and other staff. Similarly, owners and operators of the Air transportation should not be left behind in this retraining, particularly with regard to management of the operation, safety and security of the Aircraft, passengers and the goods. This becomes necessary as no amount of damages can withstand the lives that may be lost in an aircraft accident no matter how well loaded.

5. Scarcity of judicial pronouncements on the rights and liability of Air transport carriers to their passenger in Nigeria Judicial system in the opinion of the researcher is due to lack of adequate awareness (even among the Elites) on the subject matter. Accordingly, there should be a continuous National awareness by the Government at all levels on the guaranteed safety of transport passengers by their carriers and the extent to which they can claim damages in event such guaranteed safety is tampered with in any manner by the carrier.

This suggestion if implemented will go extra miles in disabusing minds of the passengers and their relatives and expand their scopes beyond the token and insufficient compensations always offered by the Air transport carrier.

Alternatively, there should be a practice particularly in Nigeria, where Air carriers are made to expressly incorporate in to the Air ticket or Airway bill a statement to the effect that passengers are entitled to sue their carriers for commensurate quantum of damages in event of loss, damage and delay.

ORGANIZATIONAL LAYOUT

The Research work shall be presented in chapters follows:-

1.0 CHAPTER ONE - GENERAL INTRODUCTION

1.0 INTRODUCTION

1.2 STATEMENT OF RESEAARCH PROBLEM

1.3 OBJECTIVES OF RESEARCH

1.4 SCOPE OF RESEARCH

1.5 RESEARCH METHODOLOGY

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2.0 CHAPTER TWO

2.1 HISTORICAL DEVELOPMENT OF AVIATION LAW

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3.0 CHAPTER THREE

3.1 AIR CARRIERS LIABILITIES

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3.3 CONSEQUENCES OF AIR CARRIERS LIABILITIES

4.0 CHAPTER FOUR

4.1 AIRCRAFT ACCIDENT

4.2 INVESTIGATION OF AIRCRAFT ACCIDENTS

4.3 ACCIDENT INVESTIGATION REPORT.

FACULTY OF LAW

AHMADU BELLO UNIVERSITY, ZARIA

APPRAISAL OF LIABILITY REGIME FOR REDRESS AND COMPENSATION FOR VICTIMS OF AIRCRAFT ACCIDENTS IN NIGERIA

SUBMITTED BY:

AHMED AHMED DAUDA

M. PHIL/PH.D/LAW/39397/2012/2013

BEING A PROPOSED RESEARCH TOPIC SUBMITTED TO THE FACULTY OF LAW, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF M.PHIL IN LAW.

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