Air Cargo and Freight Disputes under Tunisian Law

Liability for Loss, Damage and Delay in the Carriage of Goods by Air

Introduction

Air cargo has become an essential component of international commerce. High-value goods, pharmaceutical products, spare parts, perishable goods, electronic equipment and commercial merchandise are regularly transported by air because of the speed and geographical reach of air transport.

However, the speed of air transport does not eliminate legal risk.

Goods may be lost, damaged, delayed, misdelivered or destroyed during the carriage. A dispute may also arise concerning the condition of the goods when they were handed over to the carrier, the information contained in the air waybill, the identity of the party responsible for the damage, or the applicable limitation of liability.

In Tunisia, these disputes are governed by a combination of the Tunisian Civil Aviation Code, the applicable international conventions and, where appropriate, the general rules of civil and commercial liability.

The legal framework is particularly important because Tunisia is a party to the Montreal Convention of 1999, which entered into force for Tunisia on 20 November 2018.

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I. The Air Waybill: The Central Document in an Air Cargo Dispute

Article 115 of the Tunisian Civil Aviation Code provides that, for the carriage of goods by air, a document known as an air waybill (lettre de transport aérien) must be issued.

The Code further provides that the information to be contained in the document is determined by regulation.

The air waybill is therefore one of the most important pieces of evidence in cargo litigation.

It may contain information concerning:

– the consignor;

– the consignee;
– the carrier;
– the place of departure;
– the destination;
– the description of the goods;
– their weight;
– their quantity;
– their packaging;
– special handling instructions; and
– the applicable contractual arrangements.

In litigation, discrepancies between the description of the goods in the air waybill and their actual condition can become decisive.

The lawyer should therefore obtain and examine the complete documentary chain from the moment the goods were delivered to the carrier until their final delivery.

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II. When Does the Carrier Become Responsible?

The first question in a cargo dispute is often deceptively simple:

At what point did the damage occur?

The answer may determine the identity of the liable party.

The goods may pass through several stages:

shipper → freight forwarder → ground handler → airline → airport → customs → consignee.

Damage may occur during loading, storage, handling, transportation, unloading or delivery.

It is therefore not sufficient to establish that the goods arrived damaged.

The claimant must establish, depending on the applicable legal regime, that the relevant loss, destruction, damage or delay occurred during the period of carriage for which the carrier bears responsibility.

This makes evidence particularly important.

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III. Loss or Destruction of the Goods

One of the most serious air cargo disputes arises when the goods disappear entirely.

The legal questions may include:

– Were the goods actually delivered to the carrier?
– What quantity was handed over?
– Was the shipment correctly documented?
– Where were the goods last physically located?
– Were they loaded onto the aircraft?
– Were they discharged at the destination?
– Were they delivered to the consignee?
– Did customs retain them?
– Were they handed to a ground handler?
– Is there evidence of theft or misdelivery?

A cargo claim should therefore not be based solely on an assertion of non-delivery.

The documentary and operational history of the shipment must be reconstructed.

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IV. Damage to Goods during Air Transport

Damage to cargo can take many forms.

For example:

– physical destruction;
– breakage;
– water damage;
– temperature damage;
– deterioration;
– contamination;
– incorrect handling;
– damage caused by inadequate packaging;
– damage during loading or unloading; or

– damage resulting from inappropriate storage conditions.

The legal analysis will depend on the nature of the goods and the circumstances in which the damage occurred.

This is particularly important for perishable goods and temperature-sensitive products.

In such cases, evidence relating to temperature, storage conditions, handling records and delivery time may become critical.

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V. Delay in the Carriage of Goods

Delay is another major source of litigation.

A shipment may arrive after the contractual or commercially expected delivery date, resulting in:

– loss of commercial value;
– deterioration of perishable goods;
– production interruption;
– contractual penalties;
– loss of a commercial opportunity; or
– additional storage and handling costs.

The claimant must nevertheless establish the legally relevant delay and the resulting damage.

The mere fact that goods arrived late does not necessarily establish the full extent of the recoverable loss.

The distinction between delay, physical damage and consequential economic loss may become particularly important in determining compensation.

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VI. The Montreal Convention and Tunisian Law

Article 118 of the Tunisian Civil Aviation Code provides that the obligations and liability of the carrier in respect of passengers, baggage and goods are governed by the Warsaw Convention and any convention amending or replacing it that has been ratified by Tunisia.

This provision is now particularly important in light of Tunisia's accession to the Montreal Convention of 1999.

According to the current ICAO status list, Tunisia deposited its instrument of accession on 21 September 2018 and the Convention entered into force for Tunisia on 20 November 2018.

Accordingly, in an international air cargo dispute falling within the Convention's scope, the Montreal Convention becomes a central element of the legal analysis.

This is one of the first issues counsel should determine before relying exclusively on domestic law.

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VII. Limitation of Liability

One of the most important questions in cargo litigation is:

How much can the claimant actually recover?

The Montreal Convention establishes a specific liability regime and limits of liability for the carriage of cargo.

ICAO's current materials indicate that the revised limit applicable to cargo under Article 22(3) is 26 Special Drawing Rights (SDRs) per kilogram, following the revision effective 28 December 2024.

This limit may nevertheless be affected by the circumstances of the particular claim, the declarations made by the shipper and the applicable provisions of the Convention.

The lawyer must therefore distinguish between:

the actual commercial value of the goods

and

the amount legally recoverable from the carrier.

This distinction can fundamentally affect litigation strategy.

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VIII. Declared Value and the Importance of the Contract

Cargo claims cannot be analysed independently from the contractual documentation.

The shipper may have made a special declaration concerning the value of the goods.

The carrier may have accepted specific contractual conditions.

The air waybill may also contain information affecting the parties' respective obligations.

Consequently, counsel should examine:

1. the air waybill;
2. commercial invoices;
3. packing lists;
4. customs documents;
5. insurance policies;
6. delivery records;
7. damage reports;
8. photographs;
9. warehouse records;
10. correspondence between the parties.

The value declared for customs or commercial purposes should also be distinguished from any legally relevant declared value under the applicable air carriage regime.

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IX. Who Can Bring the Claim?

Another recurring issue is the identity of the claimant.

The parties involved in an air cargo transaction may include:

– the consignor;
– the consignee;
– the owner of the goods;
– the freight forwarder;
– the insurer;
– the carrier; and
– the ground-handling company.

The party bringing proceedings must therefore demonstrate its legal interest and, where necessary, its rights arising from the contract, ownership of the goods or subrogation following payment of insurance compensation.

This is particularly important where the goods are insured.

An insurer that has indemnified the owner may seek recovery against the responsible carrier to the extent permitted by the applicable rules.

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X. The Role of the Freight Forwarder

A frequent mistake in cargo litigation is to assume that the airline is always the only potentially liable party.

In practice, the contractual structure may be more complicated.

A freight forwarder may have:

– received the goods from the shipper;
– arranged the transportation;
– issued transport documentation;
– selected the airline;
– arranged customs clearance;
– organised storage; or
– contracted with ground handlers.

The lawyer must therefore determine the precise legal role of each intermediary.

The distinction between carrier, contracting carrier, actual carrier, freight forwarder and ground handler may become decisive.

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XI. Ground Handling and Cargo Damage

Many cargo disputes do not arise in the air.

They arise on the ground.

Goods may be damaged:

– while being loaded;
– during unloading;
– inside a warehouse;
– during transfer between aircraft and terminal;
– during security inspection;
– during customs procedures; or
– while awaiting onward transportation.

This raises an important legal question:

Is the damage attributable to the air carrier or to the ground-handling operator?

The answer requires an examination of the contractual arrangements and the applicable liability regime.

Evidence concerning custody and control of the goods at the moment of damage is often decisive.

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XII. The Problem of Proof

Cargo litigation is frequently won or lost on evidence.

The claimant should attempt to establish:

Condition at origin → handover to carrier → handling → loading → flight → unloading → storage → delivery.

Any gap in this chain may create uncertainty concerning the actual cause of the damage.

For this reason, a cargo lawyer should seek to preserve evidence immediately.

Important evidence may include:

– photographs taken at origin;
– photographs taken at destination;
– warehouse reports;
– cargo handling records;
– temperature logs;
– weight records;
– security reports;
– customs documentation;
– delivery receipts;
– reservations or written protests concerning damage; and
– correspondence between the parties.

The absence of contemporaneous evidence may substantially weaken a claim.

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XIII. Time Limit for Bringing an Action

Article 119 of the Tunisian Civil Aviation Code provides that an action in liability against the carrier must be brought, under penalty of forfeiture, within two years from the date on which the aircraft arrived, or should have arrived, at its destination.

This is a critical procedural issue.

A claimant may possess a strong substantive claim but lose the ability to enforce it if the applicable time limit expires.

Counsel should therefore calculate the limitation period at the very beginning of the case rather than treating limitation as a secondary issue.

In international carriage cases, the lawyer should also examine the relevant provisions of the Montreal Convention concerning limitation.

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XIV. Jurisdiction in International Cargo Disputes

Air cargo is inherently international.

A shipment may:

– originate in Tunisia;
– transit through another State;
– arrive in Europe;
– be carried by a foreign airline;
– be owned by a company established in a third State.

The resulting dispute may therefore involve several jurisdictions.

Before filing proceedings, counsel should determine:

– which courts have jurisdiction;
– whether the Montreal Convention applies;
– where the carrier is domiciled;
– where the carrier has its principal place of business;
– where the contract was made;
– where the carriage was performed;
– and whether another forum is available under the applicable international rules.

A premature choice of forum can create unnecessary procedural difficulties.

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XV. Cargo Insurance and Subrogation

Cargo insurance introduces another layer of complexity.

After compensating the owner of the goods, the insurer may seek recovery from the responsible party.

The litigation may consequently involve:

cargo owner + insurer + carrier + freight forwarder + ground handler.

The lawyer must establish the legal basis and extent of any subrogation and determine whether the insurer has acquired the claimant’s rights and within what limits.

The insurance policy and payment documentation can therefore become essential evidence.

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XVI. Customs and Air Cargo Litigation

Air cargo disputes may also intersect with Tunisian customs law.

International aircraft are subject to customs procedures concerning cargo manifests, declarations, unloading and related formalities.

The Tunisian Customs Code contains specific rules concerning goods carried on aircraft and the obligations relating to cargo documentation and presentation to customs authorities.

Consequently, a cargo dispute may sometimes involve two distinct questions:

Was the carrier liable for the loss or damage?

and

Was the goods movement itself compliant with customs requirements?

These questions should not automatically be treated as the same legal issue.

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XVII. A Practical Method for the Aviation Lawyer

When instructed in an air cargo dispute, counsel should immediately establish the following:

1. Identify the parties

Who is:

– the shipper?
– the consignee?
– the owner?
– the carrier?
– the freight forwarder?
– the ground handler?
– the insurer?

2. Identify the legal regime

Determine whether the carriage falls under:

– the Montreal Convention;
– the Warsaw Convention system;
– Tunisian domestic law; or
– another applicable legal regime.

3. Obtain the air waybill

This is usually one of the first documents that should be examined.

4. Establish the chain of custody

Determine who had physical control of the goods at each stage.

5. Establish the nature of the loss

Is it:

– loss;
– destruction;
– physical damage;
– deterioration;
– delay; or
– a combination?

6. Calculate the legally recoverable amount

Do not confuse the commercial value of the goods with the amount recoverable under the applicable liability regime.

7. Check limitation periods immediately

The two-year period under Tunisian law must not be overlooked.

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