The Legal Nature of Air Transportation in the Legal system of Iran

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Abstract

Analysis of the legal nature of Air transportation contract plays an important role in identifying tasks and the domain of the organization which is responsible for transportation. The evolution of legislation applied including Warsaw convention 1929, the Hague protocol 1955 has changed the different analysis and established an independent identity to Air transportation contract inspired by the traditional in the light of developments in the aviation industry and new ideas that guarantee the rights of the parties especially passenger. This new nature subsequently has provided a context for the new ideas discussions especially in responsibility of transport carrier. This paper aims to discuss the nature of Air transportation contract and its impact on responsibility of transportation carrier according to regulations and legal system of Iran.

Keywords: Air Transportation Contract, Air Transportation Carrier, Warsaw Convention 1929, Hague Protocol 1955, Responsibility.
Introduction

Since the speed and security as two determining factors, have been played crucial role in air transportation contracts, major alterations in the nature of transportation contracts in accordance with the mentioned factors seem unavoidable. Subjects related to transportation are basically about the hiring persons or animals in Islamic law and religious books. Our authors of the civil code who have been inspired by France civil law on 1802 have saved this format following famous Shiite scholars' quotes. About the hiring persons, however, by considering ruling principles and foundations on lease contracts, they have tried to include that age's issues based on time variations and requirements. Transportation contracts (by land, sea or air) are viewed as a kind of hiring persons and irrevocable contracts in civil law. However, commercial law (Article 516) has change the entity to following contract law (Article 378) and on the other hand, has given it a specific essence by separating it from contract law's regulations in some points (Article 383).

By studying assembled law materials and the fact that commercial law is accepted as a specific ruling law on civil regulations, one can say that transportation contracts (land, sea and air) do not have the nature of neither lease contract nor contract law. In fact, it is a kind of certain contract which has been established in modern commercial law (Jabbari 2011, 18). In case of lacking a special text, contract is subordinate to contract law regulations and attains its required works and decrees from this contract in some parts that law has not declared any rule.

According to particular features of this kind of transportation and sovereignty of equal international regulations, the situation is different in transportation by aircraft. The nature of this type of contract has been gone through critical changes in various discussions including liability foundations of transportation carrier in leasing airplane contracts. Arguments about transportation carrier's responsibility to passenger and merchandise are the most important subjects in this type of contract.

Air transportation regulations in domestic and international flights of majority of world countries are based on Warsaw's 1929 convention which is about the homogenization of some rules and protocols related to international air transportation. Previously, Iran was following the prominent regulations in commercial law and common civil codes but then civil aviation department approved other rules on national level in 1949 mainly due to complexity of this kind of transportation and also existing non-compliance between it and the age's requirement. Consequently, Imperial Iranian Government approved and joined the Act of accession to the Hague Convention of 12 October 1929 in Warsaw and protocols September 28, 1955 and September 18, 1961 Guadalajara Convention and Protocol 8 March 1971 Guatemala (Jabbari 2006,148). Therefore, most of the issues related to air transportation and foundations of carrier's responsibility could be clear (Akhlaghi 1992,9).

The mentioned conventions were executable in national transportation based on the council of Islamic revolution's adopted bill on March12, 1980 and particularly on delimitation rule of civil aviation department's responsibility in domestic flights approved by the council of Islamic Revolution parliament on November9, 1985. Although some authorities and judges had believed
that this rule was perceived as a domestic law which have never been externalized in action (Mohammadzadeh 2007,3).

This binary treatment with subject forced legislator to assign duties by delimiting responsibility of civil aviation department of Iran because according this law, Article 1- Iranian airlines charge of the transport of passengers, cargo and baggage on international flights, only in the limits of liability prescribed in international flights to the accession of Iran to the Convention for the unification of certain rules of air transport between Warsaw's International dated 12 October 1929 20 October 1308 AH corresponding to solar and formalities (Protocol) Hague amendment dated September 28, 1955 was approved in accordance with 5 Persian date Mehr 1334 Hijri 31/02/1354 Parliament and of the transport of passengers on domestic flights , only in accordance with the Penal Code and the cargo and luggage liability limit under the Warsaw Convention and the protocol (protocol) corrective Hague. The date of entry into force of this law, "the law limits the liability of airlines on flights within the country by the Iranian 08/19/1364" is canceled. The law consists of four items at a public hearing Wednesday on the eleventh of July; one thousand three hundred and ninety-one was approved by Parliament on 05.25.1391 and was approved by the Guardian Council (Iranian law limitation on the liability of airlines, Article 1 approved on August1, 2012).

In compilation international air transportation's regulation inevitably has created different legislation mainly because of existing variety of prominent regulations, day by day progression in aviation industry and different interpretation of various subjects. It can be said that all these elements have had crucial role in formation of new system of transportation carrier's liability (Akhlaghi 1992, 7).

Variety of subjects about transportation (passenger, merchandise and related delays) and different assumptions have made the nature of transportation's legal system distinctive from other types of transportation. So the question is that how it is possible to give an exact definition about transportation contract according to Warsaw convention and Hague protocol? And are the concept of leasing contracts and attorneyship contracts appropriate adverbials for the mentioned contract? Giving exact definition of the transportation contract depends on its legal nature completely.

Although important aspects of this subject have been controversial among legal scholars but the nature of air transportation contract is not evaluated independently in Iran's legal texts. This paper aims to present independent query including the nature of this subject besides shortage of Persian sources. It attempts to analyze the nature of air transportation contract among multitude rules, legal experts' different interpretations and international courts which are formed according to specific expediencies as a proposed procedure.

**Definition and Types of Air Transportation Contract**

Air transportation contract is a kind of hire of persons based on article 513 of civil law. According to this law, since a passenger or an owner of merchandise that utilizes transportation carrier's services and means is perceived as a lessee, air transportation carrier is assumed to be a hireling. Therefore, it is a type of private contract and when some issued tickets by an airline
company supervises passenger transportation from Tehran as a starting point to another city as a destination by determining airplane, seat number, particular time and date, it can be viewed as a leasing contract and passenger and benefit of certain seat of certain airplane can be perceived as the subject of lease so the airplane company would not cede it to another person. However, it occurs rarely practically because the company never assigns specific space or airplane for porterage, rather it undertakes to carry loads to certain destination by airways.

The ticket number and kind of airplane is clear in first way when it is international flight in passenger transportation, specifically when the passenger should be destined by several companies. For instance if a passenger first travels from Tehran to Genève but the second way, for example from Genève to Paris would not be clear according to international customs and just it gets cleared when the passenger reaches third party point and an airline company undertake the responsibility of transportation independently (Akhlaghí 1989,157).

It can be assumed that there are numerous contradictions and shortcomings about the concept of possession in transportation contract. Furthermore, lessee has no will of power in leasing contract while transportation carrier acts independently according to transportation contract (Erfani 1990, 142). Therefore, it seems that transportation contract cannot be one of leasing contract's paradigms. In contrast, some experts believe that transportation contract is a type of contract law. This is some European authors’ view which is followed by commercial law legislators (Ashtari 1979, 14).

However, there are some issues in comparing transportation contract with contract law because authoritative does the act of attorneyship in lieu of client in contract law and legally it is perceived as if the client has taken the act while the carrier transportation does not practice law in advocacy of passenger and undertakes the responsibility of transportation in transportation contract (Katebi 1989, 253). Another point is that contract law is a revocable contract while the transportation contract is irrevocable so the passenger or the owner of merchandise cannot dispose the carrier transportation. For instance, according to article 4 of Warsaw convention12, if the recipient requests the carrier to submit his assets, the sender cannot revoke the transportation contract and request for the merchandise refund and also the contract law is disappeared in the case of client's decease (Ebadi 1989, 303). While the transportation contract is like an irrevocable contract and the carrier's death has no effect on contract.

Due to the mentioned objections and defects, some of experts believe that basically transportation contract neither has the nature of leasing contract nor the nature contract law, but it is a kind of certain contracts which have been established in modern commercial law (shahidi 1985, 67). In any case, since the transportation contract demands some bindings for parties, it is perceived as a correlative relation between parties based on article 10 of civil law of Iran.

According to plurality of different transportation contracts like ground, maritime and air transportation and ruling different law on each, one cannot categorize them in one unified type of contract. Therefore, giving a consistent definition of any kind of transportation including air transportation depends on the analysis of its legal nature.
There is neither recitation nor the particular definition about the nature of transportation contract in Warsaw convention, Hague protocol or later reformation. So it is indispensable to look for the essence and nature of contract among law materials and judicial courts.

By over viewing Warsaw convention, Hague protocol and other domestic laws, it is considerable that transportation contract is including both the transportation of persons and also their personal assets and merchandise. Firstly, because particular regulation to each have been declared in detail. Second, the airplane is the basic type of medium by which transportation is accomplished and other vehicles like train, ship etc…are not included. Third, the main subject is liability to transportation so the passenger or the owner of merchandise may not take benefit rather it is the carrier's liability to transport passenger or merchandise by airways. Fourth, although carrier has some responsibilities in the name of recipient an sometimes contract involves three parties but the transportation contract requires two parties absolutely and the responsibility of carrier can be assumed as a liability in profit of third party as it has been prognosticated in article 196 of Iran's civil law (Ashtari 1979, 128).

The Theme of Transportation Contract and Parties

1. Transportation carrier:

The term of carrier means undertaking an accomplishment, venture to perform an action and carrier which is defined as steward, an action or an office in transportation contract (Moeen 2001, 10). Some legal experts believe that the term of "agency" which has been implied in article 5 of 632 France's commercial law is translated "transportation carrier" and it was better and more suitable to deploy the term of "agency" or "establishment" instead of carrier (saghri, 62). But some others equate the concept of carrier with repetition an profession as the requisites of realization (Aazami Zangane).

There have been some objections in definition of "carrier" and the Warsaw convention has not given any specific definition so some experts claim that it can be applied to both passenger and merchandise (Aghlaghi 1989, 190, Katebi 251, Ebadi 302, Zangane 1967, 305) because first of all, it has been implied to both passenger and merchandise (personal assets) in Warsaw convention and there are detailed explanations about the rules in different cases. Second, since carrying air transportation includes particular complexities and requisites and benefits of society should be taken to consideration, legislator has specify some conditions about it that one cannot venture to accomplish the task of transportation without the authentication of this conditions. The article 17 of civil aviation regulation of Iran approved on July 18, 1949 puts: if a natural or legal person wills to be an air transportation carrier for persons or merchandise, he is obliged to be have Iranian nationality and already have purchased permit license from civil aviation department.

Therefore, in definition of carrier can be said that every legal person who has Iranian nationality is able to reap the benefits of air transportation according to regulations and in return venture to transport persons and merchandise by airways.
2. Consignor and Recipient:

There is no definition about the other contracting party in Warsaw convention. Basically, contracting party is the one who has contract with the transportation carrier and submit merchandise for transportation. A consignor is not necessarily an owner or seller but he may be a buyer or a middleman like a freight forwarder and customs broker. This procedure depends on the sale contract or any contract which has been concluded between the owner and each freight forwarder. A merchandise recipient is the one who is entitled to receive loads according to way-bill or the consignor's orders. As well, a merchandise recipient is not necessarily an owner or seller like the consignor, but he may be anyone who is mentioned as a merchandise recipient in way-bill even though that person be a freight forwarder and the carrier is not entitled to deliver goods to anyone else unless the consignor has ordered carrier to do it in destination. (Article 1, Act 12, Warsaw Convention). It should be noted that the transportation carrier follows orders merely through way-bill which belongs to the consignor. (ibid article 3, act 12).

3. The Passenger:

In this way, there is no definition for passenger in Warsaw convention a Hague protocol but according to IATA (the International Association of air transportation), the passenger is the one who is transported with the carrier's contentment by airways or someone who is to be transported. Company's members or flight crews are exception to this definition because according to this definition, to be considered as a passenger, there is no obligation to have a ticket therefore, a transportation carrier may transport a person without ticket so any person can be assumed as a passenger with the carrier's contentment including mature, child or insane but he is not considered as a passenger if someone try to enplane fraudulently without the permission of transportation carrier. In addition, to be considered as a passenger, there is no obligation about the payment for enplaning so he is viewed as a passenger even if he boards the plane freely (article1, act1, Warsaw Convention).

4. Forwarder:

It has been translated and deployed as the "freight forwarder", "broker transport" and "custom broker" in legal texts that his role is to facilitate the business. The main reason is that he accomplishes all performances and arrangements related to passenger and merchandise transportation through international borders. The variety of a forwarder's roles in relation to passenger and merchandise transportation and logistical operations is about to progress consistently. These roles include extensive fields of consultation, conclusion of a contract with transportation carrier in advocacy of a client, accomplishment of all custom formalities and casual affair's management. In fact, forwarders are not liable for merchandise transportation but they act as a professional middleman between consignor and the recipient of merchandise on one hand and as a transportation carrier on the other hand.

5. Personal Assets and Merchandise:

The tenor of contract has a determining role in the nature of transportation contract's formation. The goods are personal assets and merchandise that are carried by airways. Personal
assets are things that passenger has delivered to the transportation carrier and has received the receipt and they are called "registered personal assets". Personal assets also include the things that passenger has taken them with himself to the inside of airplane. The attribution of merchandise or other than it depends on the parties' will and load's condition in transporting and each of these twofold concepts have separate legal effects that are prominent in determining the criterion of transportation carrier's responsibility. Therefore it seems indispensable to give exact definition for each.

Not only goods and personal assets but also human beings are the tenors of transportation contract that have been transported by airways. It should be mentioned that the French text of Warsaw convention and Hague protocol which are valid texts have utilized the word "merchandise" for goods but in English text of Warsaw convention, the word "goods" and in Hague protocol's text "cargo" have been deployed.

The word "goods" is not exact equivalent for "merchandise" in French text. Goods in English legal texts is included all movable and immovable properties in its historical usage and old meaning. But in new concept, it is limited to movable properties and every kind of person's assets with the exception of land and real-estate (Walker 1980, 551). Furthermore, because this terminology include only things and properties and not animals in texts related to contract in common law, it has been substituted by the word "cargo" to cover animals as well in Hague protocol (G. Miller 1982,10).

There is an impediment in relation to transporting corpse by airways. Although it has great emotional value for the living or remaining ones but in fact it contains no commercial or materialistic value. With respect to the emphasis that French law has put on the transported subject and content from commercial aspect, it is farfetched to consider the transportation of human corpse as merchandise and goods. According to Miller, the problem can be solved by replacing corpse in person's category but it cannot be acceptable practically (1982, 10). The main reason is that passenger is predicable for persons who are alive basically so it is not well-advised to use "passenger" for corpse by common law. The present procedure is to deploy "corpse" as a consignment and merchandise with issuing way-bill.

In air transportation, there is no doubt in categorizing paper-money and other sheets in merchandise section although they are not materialistic inherently. As in the case 'Manufactures Hannover Trust Company V. Alitalia Airlines' (1977) that 200000$ was robbed and the court in New York considered paper-money as merchandise (Diederiks-Vershoor 1985, 55).

There is another deficiency in defining personal asset like baggage in Warsaw convention and Hague protocol so one should refer to IATA which has put it as an article in the section of overall transportation condition: "personal asset means personal property which is concomitant with passenger to use or wear that is necessary for his/her comfort in travel. Unless parties stipulate another conditions in the contact. In this case, personal asset and baggage include on both registered and properties that passenger has carried them. However, there some differences between liabilities that a transportation carrier has toward passenger and merchandise transportation as below:
A. Liability Criterion:

In passenger transportation, a carrier has a liability of 125000 France's Frank for each passenger while his liability about merchandise transportation is limited to 250 Frank to each kilogram (article2, act 15, Hague protocol). With 1975 reformation in Warsaw Convention and also in order to remove the contradictions in calculating Frank, according to article 1 of Iranian law limitation on the liability of airlines SDR (Special Drawing Right) has been replaced Frank in the calculation of loses system of Iran.

B. Time Period of Liability:

In registered personal asset and merchandise transportation, the liability of carrier is contingent on occurring accidental damage during air transportation while it is contingent on occurring accidental damage inside the airplane or during passengers' getting on and off in passenger transportation.

C. Deadline of Objection in Case of Damage:

A deadline has been determined for recipient of a passenger to protest in case of compensating loses during personal asset (baggage) or merchandise transportation (article 2, act 15, Hague protocol). Otherwise, there is no permission to take an action against carrier (article6, act 26, Warsaw Convention). There are no such rules in passenger transportation.

Parties' Rights and Duties in Air Transportation Contract

I. Consignor's Rights and Duties

One of most important rights that a consignor has according to transportation contract is to have authority over forwarded merchandise. This authorship can be applied in the following cases:

- Taking back merchandise in the airport of starting point or destination.
- Stopping merchandise in airplane's descending point during travel.
- Commanding transportation carrier to deliver forwarded content to someone other than recipient who has been mentioned in way-bill.
- Requesting merchandise restitution to the airport of destination.

The transportation carrier must follow the consignor's orders and act according it otherwise he would be the responsible for incurring a loss unless:

- Consignor has not done his responsibilities toward the transportation carrier and has not paid for the refunding expenses.
- When performance of this procedure incur a loss in carrier or other consignors.
-Execution impossibility of consignor's orders. Carrier supposes to inform the consignor about proceedings when the execution of his orders are impossible (Article 2, act 12, Warsaw Convention).

II. Rights and Duties of Merchandise Recipient:

Since there is no direct contract between the carrier and recipient and the contract primarily is between the carrier and consignor, recipient may refrain to receive merchandise (Sotoude Tehrani 1971, 79). Therefore, the convention has entitled the recipient to demand way-bill and merchandise upon paying related expenses in receiving merchandise (Article 1, Act 13, Warsaw convention).

Some experts believe that there is conflict in execution of article 12 and article 13 in Warsaw convention because the convention entitles consignor to command returning merchandise after arriving it to destination in article 12 on one hand and the convention entitles recipient to request for reviving merchandise when it arrives in destination in article 13 on the other hand (Najafi Tavana, 79). But there is no contradiction between the mentioned articles based on the exact analysis of relation between carrier and recipient.

III. Passenger's Rights and Duties:

Passenger's rights according to transportation contract are as follows:

- Having authority over ticket or receipt of personal asset and goods.
- Reserving suitable seat in airplane.
- To set out passenger's provisions and resting place by carrier in case of delay.

In return, there some duties that passenger is liable to do:

- Pay for leasing and other related expenses
- Following carrier or crew's orders in contract or during flight like fastening seat belt, not smoking...

IV. The Carrier's Rights and Duties in Transportation Contract:

There are some rights for carrier in air transportation contracts as below:

- A carrier may ask a consignor to submit way-bill (Article 1, Act 5, Warsaw Convention)
- If any damage incurred due to existing commotion and deficient information in contract, he may take an action against consignor to compensate a loss (Article 2, Act 10, Ibid).
- Non-payment of lease would make carrier refrain of delivering merchandise to consignor or recipient.

In return, convention has considered some responsibilities for carrier including:
-Carrier should inform recipient once the merchandise are ready to be delivered (Article 2, Act13, and Warsaw convention). Although has not specified legal sanction or non-execution of this order. It is undeniable that carrier is the liable for damage versus consignor and recipient in case of incurring.

-Transportation carrier must obey consignor's order about returning merchandise of deliverance to recipient in transportation or destination (Article1, Warsaw convention). However, if recipient request for receiving merchandise while consignor demands the returning it, the carrier is obliged to obey recipient and deliver merchandise.

-If executing consignor's order is impossible, carrier should inform him about the circumstances.

Since the responsibility of carrier is the main concentration of air transportation, beside explanatory titles, mentioning foundations and conditions seem ineluctable.

The Foundations and Circumstances of Air Transportation Carrier's Responsibility:

Civil responsibility is the same with person's legal obligation and undertaking to compensate an emergent loss that has occurred because of his/her injurious action (Tourneau 1982, 2). Therefore, the realization of social and civil responsibility is based on three conditions:

1. Realization of a damage which causes deficiency in physical or emotional health, financial and material entity.
2. Committing an injurious action which is abnormal in society.
3. A causation relation between damage and damaging action, so the damage appear emergent from damaging action, even though the damage is not related to one cause (Katouziyan 1990, 76)

Some scholars have defined responsibility as a regulation to repair incurred losses results in civil responsibility (hasaninejad 1991,13) however others put it as "in any case that a person is obliged to compensate the other's loss, he has civil responsibility"(Katouziyan 1995,48). Some other experts believe that civil responsibility is person's obligation to compensate a loss while he/she commits an unprivileged action (Emami 1973,9). In general, civil responsibility is obligation to compensate a loss which has occurred to other whether the origin of the loss be crime or quasi-crime, contract or semi-contract, non-executing contract or law (Ripert 1952, 658).

About contractual civil responsibility, some scholars assume that this kind of responsibility is out of civil responsibility. If so, there would be more specific concepts about civil responsibility. In general term, however, there are two types of contractual and conventional civil responsibilities (Alnaghib 2005, 15).

In contractual civil responsibility, the damaged person not only is obliged to prove the sustenance a loss, but also he should prove breach of covenant and causational relation between the breach of covenant and sign loss (katouziyan, Ibid). Against what formerly pointed in transportation carrier's responsibility, damaged person only should prove sustenance of loss and
he/she is not obliged to prove causational relation between the breach of covenant and sign loss (Ebrahim Taghizade 2003, 132).

Transportation carrier undertakes to protect safety and security of passengers and merchandise. Although this kind of responsibility seems to be a commitment to result but it can be interpreted as a commitment to instrument based on the parties' obligations. In undertaking the security aspects, the type of transportation carrier's responsibility is commitment to result because in this kind of transportation, carrier undertakes to deliver merchandise in destination soundly and there is no obligation to prove extra factors.

There are contradictions about foundations of transportation carrier's responsibility in legal system of the different countries around the world. For Latin legal system it is contractual which is based on the quality of commitment to result however, according to Anglo-Saxon legal system, there is a definite difference between general and specific transportation carrier. The general transportation carrier undertakes to perform any kind of transportation in return for money without making difference among them (like what has been mentioned in the introduction of Warsaw convention as a necessary condition about compensating a loss) but the specific transportation carrier is the one who undertakes the responsibility of transportation based on peculiar and separate contract without having any regulations and undertaking to accept the transportation (Qanoonoltayaran Altejari 1994,205).

There are four types of liability systems in modern legal systems concisely:

1. The system based on proved fault or Faute Prouvee.
2. The system based on suppositional fault which is eliminated by carrier's efforts in proving non-committing it (Presumption De Faute).
3. The system based on suppositional liability which the proof of the cause of loss or carrier's unaccomplished undertaking is refutable (Presumption De Responsibilite).
4. The absolute system of liability or Responsibilite Abs.

Therefore, mentioned systems have been compiled in different forms in Warsaw convention, Hague protocol and later reformations. According to Warsaw convention, in the case of existing causal relation between damage and transportation, the transportation carrier is liable and he should prove the incurring of loss is emergent from an event that is irrelevant to him (Article 20). It should be mentioned that the definition of event in legal procedure is based on carrier's suppositional fault in Warsaw convention therefore; he would be exonerated in case of proving his innocence according to article 1, act20 of Warsaw convention. This is in contradiction with the concept of event and will result in ineffectiveness of many other terms and concepts.

In addition to necessity of occurrence an event which causes death or passenger's injury, the event should occur in definite span of time (while passenger is boarding or getting in and off of airplane) in article 17 of Warsaw convention and article 4 of Guadalajara protocol in 1971.

There are disagreements about the concept of inside the airplane when a highjack or distraintment and whether it is in transportation carrier's responsibility or not (Alkondori 1999, 104). However, it seems unfair to condemn transportation carrier in case of distraintment or after
it first of all, because his liability about passenger is in normal situation that passenger is under his control and surveillance. Second, there is no presumption about his proof of innocence in convention and the compensation of loss will be paid by insurance company in particular circumstances (Izanloo and Eshraghi Araee 2012, 152).

One would perceive that there are many deficiency and unclear points in Warsaw convention and Hague protocol, such as having no definition for the various key terms in air transportation contracts. Apart from objections and contradictory points that were discussed previously, there are no definition and detailed rule about the liability of carrier and the concept of delay, boarding or rules related to personal assets and merchandise in case of receipt's absence. Although the responsibility of absence, defectiveness or delay about passenger transportation is limited to pay for 15000 Frank and 250 Frank for each kilogram about merchandise transportation in Guadalajara protocol. In order to remove the contradictions in calculating Frank, according to article 1 of Iranian law limitation on the liability of airlines SDR (Special Drawing Right) has been replaced Frank in the calculation of loses system of Iran.

**Conclusion:**

By examination of various aspects of discussions related to transportation contract (by three major ways including ground, maritime and air transportation), we would perceive that transportation contract in general doesn't have the nature of leasing contract nor the nature of contract law. In fact, it is a specific type of certain contracts which has been established in modern commercial law and in cases that law has not specified the exact rule it follows the regulations of contract law in the absence of special text. The situation is different about the transportation by airways due to special features of this kind of transportation and also the sovereignty of equal international regulations so the nature of this kind of contracts especially the foundations of transportation carrier's liability has been volatized thoroughly.

The main concentration of this paper is on the problems about transportation carrier's liability foundations and privations of exact definition and rule about his responsibilities on passenger and merchandise transportation which have emerged due to international air transportation's quality of compilation, plentitude of ruling regulations, fast progression of aviation industry and different interpretations about various subjects that has resulted in appearing different wills from different legal systems.

The mentioned problems have undeniable effect on the formation of new liability system of transportation carrier, variety of transportation themes (passenger, merchandise and delays) and different presumptions which have altered the legal nature of transportation contract completely. While, there is no mention or exact definition about the nature of contact in Warsaw convention, Hague protocol and subsequent reformations. Furthermore, apart from the doctrine of Islamic regulations that are analytical based on four major types of liability in different circumstances, the legal system of different countries involve contradiction and controversy.

Although the legal system of Latin considers liability of transportation carrier contractual which means foundation and obstruction in undertaking have direct effect on the quality of the realization of outcome, the legal system of Anglo-Saxon make difference between the concept of
transportation carrier's liability in general or specific type. Therefore, the nature of air transportation contract should be searched separately among law articles in legal procedure based on the determining factors like consignor, recipient, passenger and transportation carrier, existing rights and duties and also various themes including merchandise, personal assets and baggage according to domestic laws, ruling international regulations and natural synopsis.

All these elements have created critical difficulties in presenting a conclusive and unique definition about the concept of transportation contract's nature and carrier's liability toward passenger, merchandise and personal assets. The author of this paper by analysis various aspects of these problems aims to call for the attention of international and national legal experts to do consultation and exchange ideas to find solution.
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