The Supreme Court and the Warsaw Convention

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On 23 September 1955, then President Ramon F. Magsaysay signed Proclamation No. 201[1] which declared the adherence of the Republic of the Philippines to the Convention for the Unification of Certain Rules Relating to International Transportation by Air, otherwise known as the Warsaw Convention[2] "to the end that the same and every article and clause thereof

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1. Office of the President, Making Public the Adherence of the Republic of the Philippines to the Convention for the Unification of Certain Rules Relating to International Transportation by Air and the Additional Protocol Thereto, Proclamation No. 201 (Sep. 23, 1955) [hereinafter Proclamation 201]. *See* 51 O.G. 4933-34 (1955) for the full text.
2. The Convention for Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 137 U.N.T.S. 11 [hereinafter Warsaw Convention]. *See* 51 O.G. 5084-96 (1955) for the full text of the Warsaw Convention. This Convention was amended by the Protocol signed at The Hague, Netherlands on 28 September 1955, otherwise known as the Hague Protocol. *See* 3 PHILIPPINE TREATY SERIES 515-24 (1969) for the full text of the Hague Protocol. The Philippines ratified the Hague Protocol on Feb. 27, 1964 and deposited its instrument of ratification with the Government of

may be observed and fulfilled with good faith by the Republic of the Philippines and the citizens thereof."[3] After more than half a century, to what extent has the Philippine Supreme Court observed the call by the late President for the application of the Warsaw Convention in adjudicating disputes arising from, relating to, or connected with international carriage by air?

I. SCOPE OF WARSAW CARRIAGE

The application of the Warsaw Convention requires an understanding of its scope, i.e., what situations or occurrences does it cover. Its Article 1, Paragraph 1 states that "[t]his Convention applies to all international carriage of persons, luggage, or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking."[4]

International carriage is defined in Article 1, Paragraph 2 of the Convention[5] as follows —

> For the purposes of this Convention, the expression 'international carriage' means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party[6] if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.[7]

Poland on Nov. 30, 1966. *See* A LIST OF AND INDEX TO PHILIPPINE TREATIES AND OTHER INTERNATIONAL AGREEMENTS 2-3 (1966). Hence, all references to the Warsaw Convention in this Article shall mean the Warsaw Convention as amended at The Hague, Netherlands in 1955 and any provision of the said Convention cited or reproduced herein which has been amended by the Hague Protocol shall refer to the amended text of such provision.

3. Proclamation No. 201.
4. Warsaw Convention, art. 1, ¶ 1.
5. *Id.* art. 1, ¶ 2.
6. Article 40 (A) of the convention provides —

   > [T]he expression High Contracting Party shall mean a State whose ratification or adherence to the Convention has become effective and whose denunciation thereof has not become effective.

   Id.
7. Warsaw Convention, art. 1, ¶ 2.

The Warsaw Convention's definition of international carriage prescribes a route which has certain particulars that characterize the route as international carriage to which the Warsaw Convention applies (Warsaw carriage). To illustrate: [t]he place of departure is in State X and the place of destination is in State Y. If both States are High Contracting Parties, the route is Warsaw carriage even though the route is reversed. If State Y is not a High Contracting Party, then the route is non-Warsaw carriage in either direction unless the route becomes a round trip which starts and ends in State X with a stopover in State Y or any other State. However if the round trip starts and ends in State Y, then the route is non-Warsaw carriage even though there is a stopover in State X or any other State. Any route between States that are not High Contracting Parties is non-Warsaw carriage even though there is a stopover in another State which is a High Contracting Party.

The route is indicated by the parties to the agreement that provides for the international carriage by air. The parties are usually the carrier who provides the service and the passenger or consignor of goods who makes use of the service.[8] Within this context, the determination of the applicability of the Convention is based on the ticket, if the agreement involves the carriage of passengers and their baggage, or the airway bill, if carriage of cargo is the subject of the agreement.[9]

The passengers on any given flight may be on different itineraries, i.e., one may be on a one-way trip from State X to State Y while another may be starting a round trip from State X to State Y and back or completing a round trip back to State Y.[10] As long as the Warsaw Convention has entered into force in both States, these differences in itineraries will not affect the applicability of the Convention.[11] Neither the nationality of the passengers nor their residence is relevant. Once the ticket is issued, the Convention applies even though the carrier performing the carriage is registered in a State which is not a High Contracting Party to the Convention.[12]

If there are several segments on the itinerary, then the applicability of the Convention will be determined by the first point of departure and the last place of scheduled arrival as agreed upon by the parties.[13] Hence, Article 1, Paragraph 3 of the Convention provides that

8. Mendoza v. Philippine Airlines, 90 Phil. 836, 845 (1952).

9. *See* Warsaw Convention, ch. 2.

10. Andreas F. Lowenfeld & Allan L. Mendelsohn, *The United States and the Warsaw Convention*, 80 HARV. L. REV. 497, 501 (1967).

11. *Id.*

12. *Id.*

13. *Id.* at 500.

> [c]arriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contract, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.[14]

This Paragraph extends the scope of Warsaw carriage to include successive carriage, i.e., the performance of the contract of carriage consists of several stages. An example can be found in a case involving a Greek seaman on his way home from New Orleans who purchased a ticket on Eastern Airlines from Louisiana to New York, where he was to proceed to Greece on another carrier on a prepaid ticket.[15] The Eastern Airlines flight crashed en route to New York.[16] The United States Court of Appeals held that the flight from Louisiana to New York is covered by the Warsaw Convention since the contract of carriage was regarded by the parties as a single operation from Louisiana to Greece.[17] Therefore, the Warsaw Convention applies to such flight since it did not lose its international character, even though it was performed entirely within the territory of the United States of America, a High Contracting Party.[18]

For successive carriage to be included within the scope of Warsaw carriage, such carriage should have the following characteristics at the time the contract of carriage or series of such contracts is perfected —

(a) the parties regard the carriage as a single operation, i.e., the itinerary though consisting of several segments is considered as a single journey;

(b) the carriage shall be performed in separate but successive stages; and

(c) the parties agreed that several successive carriers[19] will perform the carriage.[20]

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14. Warsaw Convention, art. 1, ¶ 3.

15. Stratis v. Eastern Air Lines, 682 F.2d 406, 417 (2d Cir. 1982).

16. *Id.*

17. *Id.* at 406.

18. LAWRENCE B. GOLDHIRSCH, THE WARSAW CONVENTION ANNOTATED: A LEGAL HANDBOOK 164 (1988 ed.) (citing *Stratis*, 682 F.2d at 406).

19. *See* GOLDHIRSCH, *supra* note 18, at 160. Goldhirsch provides that a successive carrier should be distinguished from a substitute carrier who agrees after the journey has commenced to carry passengers or the goods. It was not originally contracted to perform part of the itinerary at the time the contract of carriage was perfected. *Id.*

20. 1 CHRISTOPHER SHAWCROSS & K.M. BEAUMONT, SHAWCROSS & BEAUMONT: AIR LAW, VII 317 (J. David McClean, et al., eds., 4th ed. 2003).

One case in which the Philippine Supreme Court interpreted what constitutes Warsaw carriage is *Mapa v. Court of Appeals*.[21] On a flight from Boston to New York, respondent Transworld Airlines (TWA) misplaced four pieces of luggage belonging to petitioners Purita S. Mapa and Carmina S. Mapa, both of whom were passengers on said flight.[22] When suit was filed, TWA questioned the jurisdiction of the Philippine courts based on Article 28, Paragraph 1 of the Convention.[23] The petitioners argued that the Convention does not apply as their contract of carriage with TWA does not constitute Warsaw carriage.[24] The tickets which they bought were issued by TWA in Thailand and indicated an itinerary within the United States only (Los Angeles-New York-Boston-St. Louis-Chicago).[25] TWA argued that this itinerary should be considered as part of the entire journey of the petitioners which originated from Manila.[26] Hence, TWA should be considered as a successive carrier under Article 1, Paragraph 3 of the Convention.[27] However, the Court held that TWA failed to offer evidence that both TWA and the petitioners regarded the carriage from Manila to Los Angeles and from Los Angeles onwards as undivided carriage.[28] Therefore, the TWA tickets cannot be combined with the tickets for the Manila-Los Angeles flight to constitute a single operation.[29] The Warsaw Convention did not apply.[30]

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21. Mapa v. Court of Appeals, 275 SCRA 286 (1997). The petitioners were Purita S. Mapa, Carmina S. Mapa, and Cornelio P. Mapa. The private respondent was Trans-World Airlines, Inc.
22. *Id.* at 289.
23. Warsaw Convention, art. 28, ¶ 1. This Article provides —

    > An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court of the domicile of the carrier or of his principal place of business or where he has a place of business through which the contract has been made, or before the Court at the place of destination.

    Id.
24. *Mapa*, 275 SCRA at 292-93.
25. *Id.* at 288.
26. *Id.* at 301.
27. *Id.* at 300.
28. *Id.* at 301.
29. *Id.* at 299.
30. *Mapa*, 275 SCRA at 301.

II. LIABILITY OF THE CARRIER AND ITS LIMITATION

The purpose of the Warsaw Convention, as reflected in its formal title, is to provide a standard set of rules on international flights.[31] As international carriage by air linked many territories with different languages, customs, and legal systems, it became quite apparent that there was a need for a uniform approach to deal with claims arising from such mode of transportation and one definite substantive law applicable to such claims.[32] As one commentator observed —

> The problem was essentially one of jurisdiction. Exactly what law was to apply to whom and when? How could you reconcile the different international rights and laws imposed and enforced by quite different and autonomous legal systems? Any investigation produced the ultimate legal dilemma — *a conflict of laws* situation.[33]

Since the liability of the carrier is the principal issue in most of the claims, the Convention has a second goal: to limit the potential liability of the carriers for such claims. In exchange for such limitation, the Convention establishes a presumption of liability on the part of the carriers for accidents that cause injuries in the course of the Warsaw carriage.[34]

It should be noted that the Warsaw Convention becomes part of the law of any State who is a High Contracting Party.[35] As more States become High Contracting Parties, then the probability that only one set of rules will apply to international carriage by air will be enhanced.[36] Recovery of claims will also be facilitated as legal chaos will most likely be prevented by the application of one set of rules.[37]

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31. Lowenfeld & Mendelsohn, *supra* note 10, at 498.
32. *Id.* at 498-99.
33. CAROLE J. BLACKSHAW, AVIATION LAW & REGULATION 159 (1992) (emphasis supplied).
34. GOLDHIRSCH, *supra* note 18, at 5.
35. *Id. See* Santos III v. Northwest Orient Airlines, 210 SCRA 256, 260-61 (1992). Here the Supreme Court has recognized that the Warsaw Convention has the force and effect of law in the Philippines.
36. *See* 2 CHRISTOPHER SHAWCROSS & K.M. BEAUMONT, SHAWCROSS & BEAUMONT: AIR LAW, A 43-67 (J. David McClean et al., eds., 4th ed., 2003). As of 2003, there are at least 160 High Contracting Parties. *See* Contracting Parties to the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 and the Protocol Modifying the Said Convention Signed at the Hague on 28 September 1955, *available at* http://www.icao.int/icao/en/leb/wc-hp.pdf (last accessed Nov. 7, 2010).
37. BLACKSHAW, *supra* note 33, at 159-60.

The following Articles of the Convention deal with the liability of the carrier:

> Art. 17. The carrier shall be liable for damages sustained in the 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[38] or in the course of any of the operations of embarking or disembarking.
>
> Art. 18. (1) The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage, or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air.
>
> . . .
>
> Art. 19. The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods. [39]

However, Article 22, Paragraph 1 of the Convention limits such liability to 250,000 francs for each passenger while, in the case of checked baggage or cargo, Paragraph 2 (a) limits what can be recovered from the carrier to 250 francs per kilogram, unless the passenger or consignor at the time when the carrier took charge of such baggage or cargo, makes a special declaration as to its value and pays the corresponding charges arising from such declaration. With respect to "objects of which the passenger takes charge himself," the liability of the carrier is limited to 5,000 francs per passenger.[40] Paragraph 5 of the same Article clarifies that "[t]he sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures."[41]

Nevertheless, Article 25 of the Convention provides that —

> [t]he limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.[42]

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38. Helicopters are covered. *See* GOLDHIRSCH, *supra* note 18, at 8 (citing Orent v. Sabena, 8 Avi.17273 (D.C. N.Y. 1962)) (U.S.).

39. Warsaw Convention, arts. 17, 18 (1), & 19.

40. *Id.* art. 22, ¶ 3.

41. *Id.* art. 22, ¶¶ 4 & 5.

42. *Id.* art 25. *See* 51 O.G. at 5091. The Philippine Supreme Court has on several occasions interpreted the original text of Article 25 of the Warsaw Convention as follows —

In *Northwest Airlines, Inc. v. Cuenca*,[43] the Supreme Court interpreted Articles 17, 18, and 19 of the Convention in the following manner —

> Petitioner [Northwest Airlines] argues that pursuant to these provisions, an air 'carrier is liable only' in the event of death of a passenger or injury suffered by him, or of destruction or loss of, or damage to any checked baggage or any goods, or of delay in the transportation by air of passengers, baggage or goods. This pretense is not borne out by the language of said Articles. The same merely declare the carrier liable for damages in the enumerated cases, if the conditions specified therein are present. Neither said provisions nor others in the aforementioned Convention regulate or exclude liability for other breaches of contract by the carrier. Under petitioner's theory, an air carrier would be exempt from any liability for damages in the event of its absolute refusal, in bad faith, to comply with a contract of carriage, which is absurd.[44]

In this case, respondent Nicolas L. Cuenca was the holder of a first class ticket on a Northwest flight from Manila to Tokyo.[45] Upon arrival at a stopover in Okinawa, he was transferred over his objections to the tourist class compartment.[46] Despite the fact that he suffered no physical injuries as a result of the downgrade, the Supreme Court awarded ₱20,000.00 to him as nominal damages.[47]

Downgrading is also the cause of action of *Lopez, et al. v. Pan American World Airways (PANAM)*[48] wherein the defendant carrier admitted the breach but questioned on appeal the finding by the trial court that it had acted in bad faith in committing such breach.[49] What is curious about this

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> (1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his willful misconduct or such default on his part, as in accordance with the law of the court to which the case is submitted, is considered to be equivalent to willful misconduct.
>
> (2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment.

Id.

43. Northwest Airlines, Inc. v. Cuenca, 14 SCRA 1063 (1965). The private respondent was Nicolas L. Cuenca.
44. *Id.* at 1065.
45. *Id.* at 1065-66.
46. *Id.* at 1066.
47. *Id.*
48. Lopez, et al. v. Pan American World Airways, 16 SCRA 431 (1966). The petitioners were Fernando Lopez, his wife, Maria J. Lopez, his daughter, Milagros L. Montelibano, and his son-in-law, Alfredo Montelibano, Jr.
49. *Id.* at 435.

case is the absence of any reference to the Warsaw Convention although then Senator Fernando Lopez and his party (plaintiffs) who departed from Manila were downgraded on a flight from Tokyo to San Francisco.[50] It seems that the principal statute considered by the Supreme Court is Article 2220 of the Civil Code of the Philippines[51] which provides that "willful injury to property may be a legal ground for awarding moral damages if the Court should find that under the circumstances, such damages are justly due. The same rule applies to breaches of contract when the defendant acted fraudulently or in bad faith."[52]

Apparently, defendant PANAM cancelled by mistake the first-class reservations of the plaintiffs a month prior to their departure.[53] This mistake was not disclosed to the plaintiffs as PANAM's employees in Manila were hoping that the first-class reservations will eventually be reinstated before the plaintiffs left.[54] Hence, they withheld the information about the cancellation even when the first-class tickets were issued.[55] Unfortunately, the plaintiffs could not be accommodated on the first-class section of the flight and had to travel to San Francisco as tourist class passengers.[56] The Supreme Court concluded thus —

> In so misleading plaintiffs into purchasing first class tickets in the conviction that they had confirmed reservations for the same, when in fact they had none, defendant wilfully and knowingly placed itself into the position of having to breach its aforesaid contracts with plaintiffs should there be no last-minute cancellation by other passengers before flight time, as it turned out in this case. Such actuation of defendant may indeed have been prompted by nothing more than the promotion of its self-interest into holding on to Senator Lopez and party as passengers in its flight and foreclosing on their chances to seek the services of other airlines that may have been able to afford them first class accommodations. All the time, in legal contemplation such conduct already amounts to action in bad faith. For bad faith means a breach of a known duty through some motive of *interest* or ill-will.[57]

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50. *Id.* at 440-41.
51. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).
52. *Id.* art. 2220.
53. *Lopez, et al.*, 16 SCRA at 438.
54. *Id.* at 433.
55. *Id.* at 439.
56. *Id.* at 436-40.
57. *Id.* at 438 (citing Spiegel v. Beacon Participations, Inc., 8 NE 2d 895, 907 (Mass. 1937) (U.S.)).

The Court then proceeded to award to the plaintiffs ₱200,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as attorney's fees.[58]

Bad faith in the form of deceit can be present too with respect to the carriage of the passenger's luggage. In *Sabena Belgian World Airlines v. Court of Appeals*,[59] respondent Concepcion F. Fule's luggage was misplaced by petitioner Sabena on its flight from Brussels to Barcelona.[60] When it was recovered, she filed a claim for expenses with the Sabena office in Madrid.[61] Sabena agreed to pay half of her claim in Madrid with the balance payable in Manila.[62] When she received the check in settlement of part of her claim, she was asked to sign a document in French which she did not understand.[63] She was not asked by the airline employee whether or not she understood French.[64] Neither was the document translated to her. Upon her return to Manila, she learned that the document was both a receipt and a quitclaim.[65] Sabena was adjudged by the Court to have acted in bad faith in allowing Fule to execute a quitclaim without her knowledge or understanding and awarded her moral and exemplary damages in the total amount of ₱50,000.00.[66]

Air France v. Carrascoso[67] involves another case of downgrading in the course of a Warsaw carriage (Manila-Hong Kong-Saigon-Beirut with stopovers at Bangkok and Teheran), where moral and exemplary damages were awarded due to the presence of bad faith.[68] This time, bad faith was attributed not to an omission (e.g. failure to disclose in the *Lopez* case) but to the manner by which respondent Rafael Carrascoso was downgraded.[69] He was forced to vacate his first-class seat in Bangkok by petitioner Air France's manager who then gave said seat to a Caucasian, while no explanation was

58. *Id.* at 444-45.
59. Sabena Belgian World Airlines v. Court of Appeals, 171 SCRA 621 (1989). The private respondents were Concepcion, Octavio, Estrella, and Gemma, all surnamed Fule.
60. *Id.* at 623.
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.* at 623-24.
65. *Sabena Belgian World Airlines*, 171 SCRA at 624.
66. *Id.* at 630.
67. Air France v. Carrascoso, 18 SCRA 155 (1966). The private respondent was Rafael Carrascoso.
68. *Id.* at 167.
69. *Id.*

offered by the carrier for such preferential treatment.[70] In the course of the judgment, the Supreme Court declared that

> [p]assengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is, *any rude or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier.*[71]

This pronouncement sets the stage for *Zulueta v. Pan American World Airways (PANAM)*,[72] another case of Warsaw carriage (Honolulu to Manila via Wake Island) to which the Warsaw Convention was not applied, while moral and exemplary damages amounting to ₱700,000.00 were awarded for breach of contract of carriage.[73] Plaintiff Rafael Zulueta was off loaded at Wake Island from the PANAM flight.[74] Apparently, the principal reason was his refusal to open his bags for inspection.[75] There followed an altercation between him and defendant PANAM's employees.[76] The Supreme Court explained the basis for the award of damages, thus:

> The records amply establish plaintiffs' right to recover both moral and exemplary damages. Indeed, the rude and rough reception plaintiff received at the hand of Sitton or Captain Zentner when the latter met him at the ramp ('what in the hell do you think you are? Get on that plane'); the menacing attitude of Zentner or Sitton and the supercilious manner in which he had asked plaintiff to open his bags ('open your bag,' and when told that a fourth bag was missing, 'I don't give a damn'); the abusive language and highly scornful reference to plaintiffs as monkeys by one of PANAM employees (who turning to Mrs. Zulueta and Miss Zulueta remarked, 'will you pull these three monkeys out of here?'); the unfriendly attitude, the ugly stares and unkind remarks to which plaintiffs were subjected, and their being cordoned by men in uniform as if they were criminals, while plaintiff was arguing with Sitton; the airline officials' refusal to allow plaintiff to board the plane on the pretext that he was hiding a bomb in his luggage and their arbitrary and high-handed decision to leave him in Wake; Mrs. Zulueta's having suffered a nervous breakdown for which she was hospitalized as a result of the embarrassment, insults and humiliations to which plaintiffs were exposed by the conduct of PANAM's employees; Miss Zulueta's having suffered shame, humiliation and

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70. *Id.* at 166.

71. *Id.* at 168 (emphasis supplied).

72. Zulueta v. Pan American World Airways Inc., 43 SCRA 397 (1972). The petitioners were Rafael Zulueta, Telly Albert Zulueta, and Carolina Zulueta.

73. *Id.* at 422.

74. *Id.* at 402.

75. *Id.*

76. *Id.*

> embarrassment for the treatment received by her parents at the airport — all these justify an award for moral damages resulting from mental anguish, serious anxiety, wounded feelings, moral shock, and social humiliation thereby suffered by plaintiffs.[77]

The Court quoted extensively from *Air France v. Carrascoso* and cited the Civil Code provisions on common carriers[78] and damages in awarding ₱500,000.00 as moral damages, ₱200,000.00 as exemplary damages, ₱75,000.00 as attorney's fees, and ₱5,502.45 as actual damages to Zulueta.[79]

The precedent set by *Northwest Airlines v. Cuenca* and observed in *Lopez v. Pan American World Airways*, *Air France v. Carrascoso*, and *Zulueta v. Pan American World Airways* was firmly established by the time *Ortigas, Jr. v. Lufthansa German Airlines*[80] was decided by the Supreme Court.

Plaintiff Francisco Ortigas, Jr., had a confirmed first-class ticket on the Lufthansa flight from Rome to Hong Kong with stopovers in Cairo, Dharham, Calcutta, and Bangkok.[81] However, he was not allowed to take his first-class seat in Rome as it had been given to a Belgian.[82] He was induced to take an economy seat on the flight on defendant Lufthansa's assurance that he would travel first class from Cairo onwards.[83] He was only offered first class accommodation in Bangkok which he refused as a sign of protest.[84] The Court detected the presence of bad faith under the following circumstances —

> Lufthansa ... argued that there could have been no way by which its Rome office could have assured Ortigas about what he would be given in Cairo, the flight being fully booked as it was without any assurance of any first class seat being vacated by then. We are not impressed. In view of the insistence of plaintiff that he be given the first class accommodation he had contracted and paid for, the least that the Rome office should have done was to communicate with Cairo and strongly urge that all possible effort be made to comply with his well grounded request. As it happened, however, the Cairo office informed Ortigas when he arrived there that they had not received any word at all from Rome. On the contrary, as pointed out by the trial court, *contrary to the verbal assurances given Ortigas, the Lufthansa*

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77. *Id.* at 417.
78. As early as 1952, airlines have been regarded as common carriers by the Supreme Court. *See Mendoza*, 90 Phil. at 841-42.
79. *Zulueta*, 43 SCRA at 418-22.
80. Ortigas, Jr. v. Lufthansa German Airlines, 64 SCRA 610 (1975). The petitioner was Francisco Ortigas, Jr.
81. *Id.* at 638-39.
82. *Id.* at 639.
83. *Id.* at 640.
84. *Id.*

> *employee made annotations on his ticket that he was traveling economy class from Rome to Hongkong*. If, as contended by Lufthansa, Ortigas was duly advised to make arrangements for transfer to first class as soon as he arrived at each station on the way, why was such notation made that he was traveling up to Hongkong in economy class?[85]

The Supreme Court then gave prominence to the issue of discrimination by increasing the award of moral damages from ₱100,000.00 to ₱150,000.00 and exemplary damages from ₱30,000.00 to ₱100,000.00.[86] The Court explained its decision thus —

> The record of this case taken together with what was revealed in the other similar cases decided by this Court ... convinces Us that defendant, as an airline, should be made to pay an amount that can really serve as a deterrent against a seeming pattern of indifference and unconcern, and what is worse, of discrimination for racial reasons, discernible in the treatment of air passengers. This is not the first case, and unless the proper sanctions are applied, it does not appear it is going to be the last yet, of instances wherein Filipino passengers having validated and confirmed tickets for first class would be shoved to the economy class, over their valid objections and without any regard at all to their feelings and convenience, only to favor other passengers presumed by the airlines to be of superior race, hence, deserving preference. It is high time everyone concerned were made to realize that the laws of the Philippines do not permit any act of discrimination against its citizens, specially when this accompanies a clear breach of contractual obligations of common carriers whose business is affected with public interest and must be directed to serve the convenience and comfort of the passengers. When any disregard of such laws is committed, the Supreme Court, as the interpreter of such laws, must exact the commensurate liability which they contemplate.[87]

The position of the Court towards ill-treatment of Filipino passengers was once again highlighted in *Northwest Orient Airlines v. Court of Appeals*.[88] The respondent Pastoral sisters and their cousin, Velisano were treated to a trip to Hong Kong, Tokyo, and the United States by their respective parents.[89] Accompanied by their grandmother Concepcion S. Salonga, they departed for Hong Kong where they were to pick up their tickets from the office of petitioner Northwest Orient Airlines (NOA).[90] However, a mistake in the computation of their tickets led to an additional payment which

85. *Id.* at 645-46 (emphasis supplied).

86. *Ortigas, Jr.*, at 650-54.

87. *Id.* at 652-53.

88. Northwest Orient Airlines v. Court of Appeals, 186 SCRA 440 (1990). The private respondents were Annete S. Pastoral, Joy Ann S. Pastoral, Marilou Velisano, Concepcion S. Salonga, and Benjamin Salonga.

89. *Id.* at 441.

90. *Id.*

substantially depleted their funds.[91] Their financial situation made them tense which adversely affected their disposition in Japan.[92] NOA questioned the award of moral and exemplary damages by the lower court as no bad faith intervened in the computation of the fare.[93] However, the Court thought otherwise —

> We note first the error upon error committed by petitioner's agent in computing the passengers' fare, a task with which it was not exactly unfamiliar, being experienced in the travel business. That negligence imposed needless burden on the passengers who had gone on their trip, the first abroad for the three girls, precisely to enjoy themselves. Worse, the negligence, which was strange enough as it was, was not the only vexation. On top of this annoyance was the manner in which petitioner's personnel in [Hong Kong] sought to rectify the supposed mistakes of its Manila office. It was far from acceptable.
>
> The petitioner's employees should have been at least polite if not even sympathetic and apologetic to the two young girls in the foreign land. Instead, they were overbearing and hostile, forgetting that they were dealing not with bothersome persons begging for a free ride. The girls were respectable passengers who had in fact paid for their tickets in advance in the exact amount computed by the petitioner's own agent in Manila.
>
> Annete Pastoral and Marilou Velisano testified that they were treated coldly and arrogantly by the NOA [Hong Kong] personnel. They were flatly told their tickets would not be released unless the additional charge was paid. They were humiliated when their request to contact the Manila office by telex was haughtily rejected in the presence and within hearing of other persons. They were not accorded the courtesy due them even only as ordinary individuals, if not, indeed, as pre-paid passengers.[94]

Then the Court manifested its stance towards discourteous conduct by airline employees, thus —

> The cavalier treatment of the two girls at the Hongkong NOA office requires a brief comment. The Court feels it is about time foreigners realized that Filipinos, whatever their station in life, are entitled to the same civility accorded other persons when they are in an alien land. We cannot be dismissed or disdained on the basis of our nationality, which is as proud and as respectable as any other on this earth. The haughty attitude of some foreigners who seem to think they belong to a superior race has irked not a few Filipino travelers. Let it be stressed to our credit that we are not impressed at all by such self-importance. Airlines should specially advise their personnel against superciliousness when dealing with citizens of the

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91. *Id.*

92. *Id.* at 442.

93. *Id.* at 443.

94. *Northwest Orient Airlines*, 186 SCRA at 444-45.

> Philippines and are cautioned that this Court will not countenance that kind of conduct.
>
> We hold that the acts of the petitioner, assessed in their totality, constituted more than mere negligence and assumed the dimensions of bad faith. There was clear malice here, manifested in the contemptuous disregard of the passenger's protest and the abrupt rejection of their request that the Manila office be contacted for verification of the correct billing. *Rudeness is never excusable.* It is specially condemnable if it is committed in one's own country against a foreign guest, as in the case at bar.[95]

The Court awarded a total of ₱60,000.00 as moral damages, ₱40,000.00 as exemplary damages, and ₱20,000.00 as attorney's fees.[96]

This Case has elevated rude behavior by airline personnel into a particular cause of action by passengers.[97] In previous cases, bad faith accompanied a specific breach of the contract of carriage such as downgrading or off-loading of passengers.[98] In this Case, rude behavior, by itself, constitutes a breach of contract and simultaneously indicates bad faith on the part of the carrier.[99]

Indeed, this position is not restricted to the carriage of passengers. It extends to the carriage of their luggage as shown in *Cathay Pacific Airways, Ltd. v. Court of Appeals.*[100] In this Case, the petitioner airline misplaced respondent Tomas L. Alcantara's luggage on a trip from Manila to Jakarta via Hong Kong.[101] Although he recovered while still in Jakarta his luggage which did not suffer any damage,[102] he was still awarded moral and exemplary damages based on the following —

> While the mere failure of [Cathay] to deliver respondent's luggage at the agreed time and place did not ipso facto amount to willful misconduct since the luggage was eventually delivered to private respondent, albeit belatedly, We are persuaded that the employees of [Cathay] acted in bad faith. We refer to the deposition of Romulo Palma, Commercial Attache of the Philippine Embassy at Jakarta, who was with respondent Alcantara when the latter sought assistance from the employees of [Cathay]. This deposition

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95. *Id.* at 445-46 (emphasis supplied).

96. *Id.* at 446-47.

97. *Id.* at 444.

98. *See Ortigas, Jr.*, 64 SCRA at 643-44; *Zulueta*, 43 SCRA at 402; & *Lopez, et al.*, 16 SCRA at 440-41.

99. *Northwest Orient Airlines*, 186 SCRA at 444.

100. Cathay Pacific Airways, Ltd. v. Court of Appeals, 219 SCRA 520 (1993). The private respondent was Tomas L. Alcantara.

101. *Id.* at 522-23.

102. *Id.* at 527.

was the basis of the findings of the lower courts when both awarded moral damages to private respondent. Hereunder is part of Palma's testimony —

Q. What did Alcantara say, if any?

A. Mr. Alcantara was of course ... I could understand his position. He was furious for the experience because probably he was thinking he was going to meet the Director-General the following day and, well, he was with no change of proper clothes and so, I would say, he was not happy about the situation.

Q. What did Mr. Alcantara say?

A. He was trying to press the fellow to make the report and if possible make the delivery of his baggage as soon as possible.

Q. And what did the agent or duty officer say, if any?

A. The duty officer, of course, answered back saying, 'What can we do, the baggage is missing. I cannot do anything 'something like it.' Anyhow you can buy anything you need, charged to Cathay Pacific.'

Q. What was the demeanor or comportment of the duty officer of Cathay Pacific when he said to Mr. Alcantara 'You can buy anything chargeable to Cathay Pacific'?

A. If I had to look at it objectively, the duty officer would like to dismiss the affair as soon as possible by saying indifferently 'Don't worry. It can be found.'

Indeed, the aforequoted testimony shows that the language and conduct of petitioner's representative towards respondent Alcantara was discourteous or arbitrary to justify the grant of moral damages. The [Cathay] representative was not only indifferent and impatient; *he was also rude and insulting*. He simply advised Alcantara to buy anything he wanted. But even that was not sincere because the representative knew that the passenger was limited only to US $20.00 which, certainly, was not enough to purchase comfortable clothings appropriate for an executive conference. Considering that Alcantara was not only a revenue passenger but even paid for a first-class airline accommodation and accompanied at the time by the Commercial Attache of the Philippine Embassy who was assisting him in his problem, petitioner or its agents should have been more courteous and accommodating to private respondent, instead of giving him a curt reply, 'What can we do, the baggage is missing. I cannot do anything ... Anyhow, you can buy anything you need, charged to Cathay Pacific.' [Cathay's] employees should have been more solicitous to a passenger in distress and assuaged his anxieties and apprehensions. To compound matters, [Cathay] refused to have the baggage of Alcantara delivered to him at his hotel; instead, he was required to pick it up himself with an official of the Philippine Embassy. Under the circumstances, it is evident that petitioner was remiss in its duty to provide proper and adequate assistance to a paying passenger, more so one with first class accommodation. Where in breaching the contract of carriage the defendant airline is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the

> natural and probable consequences of the breach of the obligation which the parties had foreseen or could have reasonably foreseen. In that case, such liability does not include moral and exemplary damages. Conversely, if the defendant airline is shown to have acted fraudulently or in bad faith, the award of moral and exemplary damages is proper.[103]

It should be noted that in this Case, the Supreme Court acknowledged that the Warsaw Convention has the force and effect of law in the Philippines since it has been ratified by the Philippine government.[104] It relied on the *Cuenca* ruling when it pointed out that

> said [C]onvention does not operate as an exclusive enumeration of the instances for declaring a carrier liable for breach of contract of carriage or as an absolute limit of the extent of that liability. The Warsaw Convention declares the carrier liable for damages in the enumerated cases and under certain limitations. However, it must not be construed to preclude the operation of the Civil Code and other pertinent laws. It does not regulate, much less exempt, the carrier from liability for damages for violating the rights of its passengers under the contract of carriage especially if willful misconduct on the part of the carrier's employees is found or established, which is clearly the case before Us.[105]

But even though the delay in delivering the passenger's luggage may not be accompanied by any willful misconduct or rude behavior on the part of the airline's employees, this circumstance may not be sufficient for the airline to avail itself of the Convention's limitation on liability.[106] As the Court explained in *Alitalia v. Intermediate Appellate Court*[107] —

> [S]light reflection readily leads to the conclusion that [the Convention] should be deemed a limit of liability only in those cases where the cause of death or injury to a person, or destruction, loss or damage to property or delay in its transport is not attributable to or attended by any willful misconduct, bad faith, recklessness, or otherwise improper conduct on the part of any official or employee for which the carrier is responsible, and there is otherwise no special or extraordinary form of resulting injury. … Nor may it for a moment be supposed that if a member of the aircraft complement should inflict some physical injury on a passenger, or maliciously destroy or damage the latter's property, the Convention might successfully be pleaded as the sole gauge to determine the carrier's liability to the passenger. Neither may the Convention be invoked to justify the disregard of *some extraordinary sort of damage* resulting to a passenger and preclude recovery thereof beyond the limits set by said Convention. It is in

103. *Id.* at 525-27 (emphasis supplied).

104. *Id.* at 527.

105. *Id.* at 527-28.

106. Alitalia v. Intermediate Appellate Court, 192 SCRA 9 (1990).

107. *Id.* The private respondent was Felipa E. Pablo.

> this sense that the Convention has been applied, or ignored, depending on the peculiar facts presented by each case.[108]

This Case involved a University of the Philippines professor (respondent Felipa E. Pablo) who was invited to address a meeting sponsored by the United Nations in Ispra, Italy.[109] The Petitioner airline misplaced her two suitcases, one of which contained her scientific papers, slides, and other materials that she would need for her presentation.[110] Hence, she decided to skip the meeting and return to Manila.[111] The luggage was located and forwarded to Ispra but arrived the day after her scheduled appearance and participation at the meeting there by which time the professor was on her way back to Manila.[112] They were eventually delivered to her eleven months later, apparently without substantial damage.[113] Although no bad faith or any discourteous conduct could be attributed to the airline's employees, the Court nevertheless found as a fact that —

> some special species of injury was caused to Dr. Pablo because petitioner [Alitalia] misplaced her baggage and failed to deliver it to her at the time appointed — a breach of its contract of carriage, to be sure — with the result that she was unable to read the paper and make the scientific presentation (consisting of slides, autoradiograms or films, tables and tabulations) that she had painstakingly labored over, at the prestigious international conference, to attend which she had traveled hundreds of miles, to her chagrin and embarrassment and the disappointment and annoyance of the organizers. She felt not unreasonably, that the invitation for her to participate at the conference ... was a singular honor not only to herself, but to the University of the Philippines and the country as well, an opportunity to make some sort of impression among her colleagues in that field of scientific activity. The opportunity to claim this honor and distinction was irretrievably lost to her because of Alitalia's breach of its contract.
>
> Apart from this, there can be no doubt that Dr. Pablo underwent profound distress and anxiety, which gradually turned to panic and finally despair, from the time she learned that her suitcases were missing up to the time when, having gone to Rome, she finally realized that she would no longer be able to take part in the conference. As she herself put it, she 'was really shocked and distraught and confused.'

108. *Id.* at 17-18 (emphasis supplied).

109. *Id.* at 12.

110. *Id.*

111. *Id.*

112. *Alitalia*, 192 SCRA at 13.

113. *Id.*

> Certainly, the compensation for the injury suffered by Dr. Pablo cannot, under the circumstances, be restricted to that prescribed by the Warsaw Convention for delay in the transport of luggage.[114]

The Court proceeded to award ₱40,000.00 as nominal damages to vindicate her right which had been violated by the airline.[115]

What other special species of injury has been recognized by the Supreme Court?

In *Lufthansa German Airlines v. Court of Appeals*,[116] the Court affirmed that some species of injury was caused to respondent Don M. Ferry because of petitioner airline's failure to endorse his ticket to Cathay Pacific Airways.[117] In the absence of competent proof on the actual damages suffered, Ferry is adjudged as entitled to nominal damages, citing the preceding case involving Professor Pablo.[118] It should be noted that the Court found no evidence of rude behavior on the part of Lufthansa's employees.[119]

The eruption of Mt. Pinatubo in June of 1991 led to the temporary closure of Ninoy Aquino International Airport (NAIA) in Manila. This situation led to the cancellation of several flights including those of Japan Airlines (JAL). While the Court recognized in *Japan Airlines v. Court of Appeals*[120] that the eruption was a fortuitous event which excuses the carrier from non-performance of the contract of carriage,[121] it nevertheless held that —

> We are not prepared, however, to completely absolve petitioner JAL from any liability. It must be noted that private respondents bought tickets from the United States with Manila as their final destination. While JAL was no longer required to defray private respondents' living expenses during their stay in Narita on account of the fortuitous event, JAL had the duty to make the necessary arrangements to transport private respondents on the first available connecting flight to Manila. Petitioner JAL reneged on its obligation to look after the comfort and convenience of its passengers when

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114. *Id.* at 19-20.

115. *Id.* at 20.

116. Lufthansa German Airlines v. Court of Appeals, 243 SCRA 600 (1995). The private respondent was Don M. Ferry.

117. *Id.* at 616.

118. *Id* (citing *Alitalia*, 192 SCRA at 9).

119. *Id.* at 612-14.

120. Japan Airlines v. Court of Appeals, 294 SCRA 19 (1998). The private respondents were Enrique Agana, Maria Angela Nina Agana, Adalia B. Francisco, and Jose Miranda.

121. *Id.* at 24.

> it [re]classified private respondents from 'transit passengers' to 'new passengers' as a result of which private respondents were obliged to make the necessary arrangements themselves for the next flight to Manila[.]
>
> We are not oblivious to the fact that the cancellation of JAL flights to Manila from June 15 to June 21, 1991 caused considerable disruption in passenger booking and reservation. In fact, it would be unreasonable to expect, considering NAIA's closure, that JAL's flight operations would be normal on the days affected. Nevertheless, *this does not excuse JAL from its obligation to make the necessary arrangements to transport private respondents on its first available flight to Manila.* After all, it had a contract to transport private respondents from the United States to Manila as their final destination.
>
> Consequently, the award of nominal damages is in order ... The court may award nominal damages ... in every case where any property right has been invaded.[122]

Each private respondent received ₱100,000.00 as nominal damages.[123]

A case of rerouting in *Savellano v. Northwest Airlines*[124] provided another example of a special species of injury. The Court construed Condition No. 9 of the ticket which states that the "carrier may without notice substitute alternate carriers or aircraft, and may alter or omit stopping places shown on the ticket in case of necessity."[125] It held that the text of Condition No. 9 does not authorize the respondent airline to decide unilaterally what stopping places other than those indicated on the ticket the passengers should pass through and when they should fly.[126] It clarified that although Condition No. 9 allows the airline to substitute alternate carriers or aircraft without notice,

> nothing there permits shuttling passengers — without so much as a by your leave — to stopping places that they have not been previously notified of, much less agreed to or has been prepared for. Substituting *aircrafts or carriers* without notice is entirely different from changing *stopping places or connecting cities* without notice.
>
> The ambiguities in the contract, being one of adhesion, should be construed against the party that caused its preparation — in this case, respondent. Since the conditions enumerated on the ticket do not specifically allow it to change stopping places or to fly the passengers to alternate connecting cities without consulting them, then it must be construed to mean that such unilateral change was not permitted.
>
> ...

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122. *Id.* at 25-26 (emphasis supplied).

123. *Id.* at 27.

124. Savellano v. Northwest Airlines, 405 SCRA 416 (2003). The petitioners were Victorino Savellano, Virginia B. Savellano, and Deogracias B. Savellano.

125. *Id.* at 423.

126. *Id.* at 423-24.

> Furthermore, the change in petitioners' flight itinerary does not fall under the situation covered by the phrase 'may alter or omit stopping places shown on the ticket in case of necessity.' A case of necessity must first be proven. The burden of proving it necessarily fell on respondent. This responsibility it failed to discharge[.]
>
> The airplane engine trouble that developed during the flight bound for Tokyo from San Francisco definitely merited the 'necessity' of landing the plane at some place for repair — in this case, Seattle — but not that of shuttling petitioners to *other* connecting points thereafter without their consent.
>
> Northwest failed to show a 'case of necessity' for changing the stopping place from Tokyo to Los Angeles and Seoul. It is a fact that some of the passengers on the distressed flight continued on to the Tokyo (Narita) connecting place. No explanation whatsoever was given to petitioners as to why they were not similarly allowed to do so. It may be that Northwest connecting flight from Seattle to Tokyo to Manila could no longer accommodate them. Yet, it may also be that there were other carriers that could have accommodated them for these sectors of their journey, and whose route they might have preferred to the more circuitous one unilaterally chosen for them by respondent.
>
> In the absence of evidence as to the actual situation, the Court is hard pressed to determine if there was a 'case of necessity' sanctioning the alteration of the Tokyo stopping place in the case of petitioners. Thus, *we hold that in the absence of a demonstrated necessity thereof and their rerouting to Los Angeles and Seoul as stopping places without their consent, respondent committed a breach of the contract of carriage.*[127]

This Case is noteworthy for another reason. The Court disallowed the claim for loss of part of the contents of the Savellanos' (petitioners) luggage as they failed to file a complaint with the carrier as required by the conditions of carriage printed on their ticket based on the Warsaw Convention.[128] However Northwest was ordered to pay ₱150,000.00 to each of the Savellanos as nominal damages.[129]

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127. *Id.* at 424-25 (emphasis supplied).

128. *Id.* at 430. Article 26 of Warsaw Convention provides:

> (1) Receipt by the person entitled to the delivery of baggage or goods without complaint shall be *prima facie* evidence that same have been delivered in good condition and in accordance with the document of transportation.
>
> (2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and at the latest, within seven days from the date of receipt in case of baggage and fourteen days from the date of receipt in case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal (as amended by Hague Protocol of 1955). Warsaw Convention, art. 26.

The most bizarre example yet of a special species of injury is *Cathay Pacific Airways, Ltd. v. Vazquez,*[130] wherein the petitioner carrier was held liable for breach of contract for upgrading the respondent Vazquez couple from business class to first class on its flight from Hong Kong to Manila.[131] The Supreme Court declared that passengers cannot be prevailed upon to transfer from business class to first class especially if they decline the upgrade and wish to remain in business class which is what they contracted for.[132] Should the airline try to impose the upgrade by notifying the passengers that they may not be allowed to take the flight,[133] it could be held liable for nominal damages which in this case amounted to ₱5,000.00.[134] Some special species of injury, indeed!

The airline disclosed that the reason why the Vazquez couple was upgraded was that the business class section was overbooked for that particular flight.[135] It is a common phenomenon that more often than not, a significant number of passengers with confirmed reservations fail to check-in for their flights without cancelling their reservations beforehand.[136] Thus, it is a widespread practice among airlines to book more passengers than there are seats on a flight or section of an aircraft to decrease the number of empty seats.[137]

When such overbooking results in passengers being denied boarding for flights for which they hold confirmed reservations, they could recover moral and exemplary damages as in *Alitalia Airways v. Court of Appeals*[138] because

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(3) Every complaint must be made in writing upon the document of transportation or by separate notice in writing dispatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Id.

129. *Savellano*, 405 SCRA at 431.

130. Cathay Pacific Airways, Ltd. v. Vazquez, 399 SCRA 207 (2003). The respondents were the spouses Daniel E. Vasquez and Maria Luisa M. Vazquez.

131. *Id.* at 219-20.

132. *Id.* at 220.

133. *Id.*

134. *Id.* at 225.

135. *Id.* at 215-16.

136. *See* STEPHEN SHAW, AIRLINE MARKETING AND MANAGEMENT 170 (6th ed. 2007).

137. GOLDHIRSCH, *supra* note 18, at 83.

138. Alitalia Airways v. Court of Appeals, 187 SCRA 763 (1990). The private respondents were the spouses Jose O. Juliano and Victoria G. Juliano.

> when an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage.[139]

Deliberate overbooking is a form of ill-treatment of the passengers as it exposes them to the "indignity and inconvenience of being refused a confirmed seat on the last minute."[140] Furthermore, it is clear that petitioner Alitalia did not intend to accommodate all passengers with confirmed reservations as it failed to institute "any measure to contact all possible passengers for each flight who might be within the airport premises."[141]

Another instance wherein overbooking resulted in an award of moral and exemplary damages is *Zalamea v. Court of Appeals.*[142] Although the Court seem to recognize that overbooking is permissible, it still considered respondent Trans World Airlines, Inc. (TWA) to be in bad faith for failing to inform its passengers of the possibility that their confirmed reservations may not be honored due to overbooking.[143] Said practice should have been stipulated in their tickets or otherwise made known to the passengers before their flight to prepare them for such an eventuality or enable them to choose another carrier.[144] TWA should also have promptly advised the Zalameas (petitioners) that their flight was overbooked and that priority in boarding depended on the type of ticket issued to them, i.e., full-fare ticket holders board ahead of discounted ticket holders.[145] Without such notice, the Zalameas had the right to expect that their confirmed reservations assured them of seats without any qualification.[146] Therefore —

> The failure of respondent TWA to so inform them when it could easily have done so thereby enabling respondent to hold on to them as passengers up to the last minute amounts to bad faith. Evidently, respondent TWA placed its self-interest over the rights of the petitioners under their contracts of carriage. Such conscious disregard of petitioners' rights makes respondent TWA liable for moral damages. To deter breach of contracts by respondent

139. *Id.* at 770.

140. *Id.* at 771.

141. *Id.*

142. Zalamea v. Court of Appeals, 228 SCRA 23 (1993). The petitioners were Cesar, Suthira, and Liana, all surnamed Zalamea.

143. *Id.* at 32.

144. *Id.*

145. *Id.* at 33.

146. *Id.*

> TWA in similar fashion in the future, we adjudge respondent TWA liable for exemplary damages, as well.[147]

The *Zalamea* ruling has been modified by *United Airlines Inc. v. Court of Appeals*,[148] wherein the Supreme Court took judicial notice of Economic Regulation No. 7 issued by the Civil Aeronautics Board on Boarding Priority and Denied Boarding Compensation whose scope is defined as follows —

> This regulation shall apply to every Philippine and foreign air carrier with respect to its operation of flights or portions of flights originating from or terminating at, or serving a point within the territory of the Republic of the Philippines insofar as it denies boarding to a passenger on a flight, or portion of a flight inside or outside the Philippines, for which he holds confirmed reserved space. Furthermore, this regulation is designed to cover only honest mistakes on the part of the carriers and excludes deliberate and willful acts of non-accommodation. *Provided, however, that overbooking not exceeding 10% of the seating capacity of the aircraft shall not be considered as a deliberate and willful act of non-accommodation.*[149]

The Court construed this regulation to mean that as long as the overbooking does not go beyond 10% of the seating capacity of the aircraft, it does not amount to bad faith as it is not deliberate.[150]

If passengers do not observe check-in procedures[151] or fail to check-in on time, i.e., before the flight manifest is closed,[152] and as a result they were unable to use their confirmed reservations due to overbooking, the carrier is not liable for damages.[153] However, if the passenger had already checked-in, passed through immigration and customs, and is climbing the ramp leading to the aircraft, he cannot be denied boarding at that stage by the carrier without incurring liability for damages.[154] The carrier may not also avoid liability if the overbooking results in downgrading as it is the Court's

> considered view that when it comes to contracts of common carriage, inattention and lack of care on the part of the carrier resulting in the failure of the passenger to be accommodated in the class contracted for amounts to

147. *Id.* at 33-34.

148. United Airlines, Inc. v. Court of Appeals, 357 SCRA 99 (2001). The private respondents were Aniceto Fontanilla and Mychal Andrew Fontanilla.

149. *Id.* at 110 (emphasis supplied).

150. *Id.*

151. *Id.* at 106-08.

152. Morris v. Court of Appeals, 352 SCRA 428, 432 (2001).

153. *See United Airlines, Inc.*, 357 SCRA at 111 & *Morris*, 352 SCRA at 437-38.

154. *See* Korean Airlines Co. Ltd. v. Court of Appeals, 234 SCRA 717, 721-24 (1994), where the passenger was also treated rudely by airline employees.

bad faith or fraud which entitles the passenger to the award of moral damages.[155]

Can a passenger's luggage be the subject of discrimination? In *Philippine Airlines, Inc. (PAL) v. Court of Appeals*,[156] the luggage of the respondents Dr. Josefino Miranda and Luisa Miranda who were on a PAL flight from San Francisco to Manila via Honolulu was off-loaded in Honolulu to give way to some containers originating from Honolulu and destined for Manila.[157] This preference was characterized by the Supreme Court as an act of discrimination perpetrated by petitioner PAL[158] and awarded the couple ₱100,000.00 as moral damages and ₱30,000.00 as exemplary damages.[159] Can a species of injury be more special than that?

While one act of negligence may not amount to bad faith, a series of negligent acts may lead to a different conclusion. In *Singson v. Court of Appeals*,[160] petitioner Carlos Singson was in Los Angeles on his way home to Manila but could not reconfirm his connecting flight from San Francisco to Hong Kong as the coupon for this flight was missing from his ticket.[161] It appears that it was mistakenly detached from his ticket by one of respondent Cathay's agents when he checked-in for an earlier flight on his itinerary.[162] However this mistake was compounded by Cathay's insistence that the existence and validity of the missing coupon be first verified before Singson's connecting flight to Hong Kong can be reconfirmed even though Cathay's computers indicated that Singson had a reservation for said flight.[163] Then Cathay asked Singson to attend to the verification himself in San Francisco even though Cathay had all the necessary equipment in Los Angeles to facilitate said verification.[164] Finally, the verification process took five days since Cathay's Hong Kong office failed to respond promptly to the request for verification from its Los Angeles office.[165] The remarks of the Court are as follows —

155. *Ortigas, Jr.*, 64 SCRA at 643-44.

156. Philippine Airlines, Inc. v. Court of Appeals, 257 SCRA 33 (1996). The private respondents were Dr. Josefino Miranda and Luisa Miranda.

157. *Id.* at 36.

158. *Id.* at 40-42.

159. *Id.* at 48.

160. Singson v. Court of Appeals, 282 SCRA 149 (1997). The petitioner was Carlos Singson while the private respondent was Cathay Pacific Airways, Inc.

161. *Id.* at 154.

162. *Id.* at 159-60.

163. *Id.* at 160.

164. *Id.* at 160-61.

165. *Id.*

> Taken together, they indubitably signify more than ordinary inadvertence or inattention and thus constitute a radical departure from the extraordinary standard of care required of common carriers. Put differently, these circumstances reflect the carrier's utter lack of care and sensitivity to the needs of its passengers, clearly constitutive of gross negligence, recklessness and wanton disregard of the rights of the latter, acts evidently indistinguishable or no different from fraud, malice and bad faith.[166]

Singson was awarded ₱200,000.00 as moral damages and ₱50,000.00 as exemplary damages.[167] On the other hand, a carrier who lost the same luggage twice was characterized as wantonly negligent[168] and thus, liable for moral and exemplary damages.[169]

The non-application of the Warsaw Convention and its limits on the liability of the carrier in the aforementioned cases reflects the consistent position of the Supreme Court, as enunciated in the *Cuenca* ruling, that the Convention governs the liability of the air carrier only in those instances specified in Articles 17, 18, and 19 of the Convention and does not exclude liability for other breaches of contract by the carrier.[170]

Indeed, even if the incident in question appears to be within the scope of the Convention, the Court still refuses to apply the Warsaw limitation figures through its construction of the situation in a manner that will disallow such application. An example is *Philippine Airlines, Inc. v. Intermediate Appellate Court*.[171] On a trip from Manila to Honolulu via Tokyo, one piece of luggage belonging to the respondent Lorenzana couple was misplaced.[172] It was eventually found and recovered by the couple more than a year after their return to the Philippines.[173] When they claimed actual damages in excess of the Warsaw limits, the petitioner carrier interposed the defense that its liability is limited to what is provided in Article 22, Paragraph 2 of the Convention in the absence of a declaration of higher value by the

166. *Singson*, 282 SCRA at 163.

167. *Id.* at 165.

168. *See* Sabena Belgian World Airlines v. Court of Appeals, 255 SCRA 38, 45 (1996).

169. *See Sabena Belgian World Airlines*, 255 SCRA at 47.

170. *See* Northwest Airlines, Inc. v. Cuenca, 14 SCRA at 1065.

171. Philippine Airlines, Inc. v. Intermediate Appellate Court, 216 SCRA 334 (1992). The private respondents were George Lorenzana and Veronica G. Lorenzana.

172. *Id.* at 336.

173. *Id.*

passenger.[174] The Court maintained that there was no delay under the terms of the Convention by stating that —

> It was not until more than a year later ... when the luggage was finally delivered to private respondents. *There is thus no occasion to speak of delay since the baggage was not delivered to the passenger at all for purposes of the trip* in contravention of the common carrier's undertaking to transport the goods from the place of embarkation to the ultimate point of destination. In point of law, petitioner cannot therefore ascribe an alleged reversible error on the part of respondent court for adhering to the pronouncement of this Court in *Northwest Airlines, Inc. v. Cuenca* when the exculpatory clauses raised by the common carrier therein, predicated on the limited liability provisions of the Warsaw Pact [sic], were brushed aside.[175]

In another case involving PAL,[176] the Respondent Passenger lost one piece of luggage on a PAL flight from San Francisco to Manila.[177] When Petitioner PAL wanted to limit its liability under the Warsaw Convention, the Court applied the provisions of the Civil Code on common carriers exclusively because Article 1753 of the Civil Code provides that "the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration."[178] Since the Philippines was the destination of the flight, Philippine law is applicable to the issue of the carrier's liability.[179] The Court seems to have overlooked the inclusion of the Warsaw Convention as part of Philippine law.

Apparently, the Supreme Court will not apply the Warsaw Convention to cases involving Warsaw carriage if the airline through its agents or employees is considered to have engaged in (a) willful misconduct that constitutes a breach of the contract of carriage or (b) some form of rude behavior which by itself is deemed to be an act of bad faith.[180] In the absence of both kinds of improper conduct, passengers can still recover damages from the airline if they prove that they suffered some "special species of injury."

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174. *Id.* at 336-37.

175. *Id.* at 338-39 (emphasis supplied).

176. Philippine Air Lines v. Court of Appeals, 207 SCRA 100 (1992). The private respondent was Isidro Co.

177. *Id.* at 101-02.

178. *Id.* at 104 (citing CIVIL CODE, art. 1753).

179. *Id.* at 105.

180. *Id.* at 104-05.

This observation has been confirmed by two recent decisions of the Supreme Court. In *Japan Airlines v. Simangan*,[181] the Court applied the Civil Code in holding the petitioner airline liable for moral and exemplary damages due to its "inattention to and lack of care for the interests of its passengers who are entitled to its utmost consideration, particularly as to their convenience."[182] The Court emphasized that —

> [n]eglect or malfeasance of the carrier's employees could give ground for an action for damages. Passengers have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration and are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees.[183]

On the other hand, the Supreme Court characterized *Philippine Airlines, Inc. v. Savillo*[184] as involving

> a special species of injury resulting from the failure of PAL and/or Singapore Airlines to transport private respondent from Singapore to Jakarta — the profound distress, fear, anxiety and humiliation that private respondent experienced when, despite PAL's earlier assurance that Singapore Airlines confirmed his passage, he was prevented from boarding the plane and he faced the daunting possibility that he would be stranded in Singapore Airport because the PAL office was already closed.[185]

The question then arises: Has the Supreme Court ever ruled in favor of the carrier or applied the Warsaw Convention in its favor?

In *Pan American World Airways, Inc v. IAC*,[186] respondent Rene V. Pangan's luggage was lost in the custody of petitioner PANAM on its flight from Manila to Guam.[187] He sued PANAM for actual damages in excess of the limitation figure under Article 22 of the Convention for lost luggage.[188] On appeal, the Court limited the recovery by Pangan to US$ 600.00 as stipulated in the ticket issued to Pangan which contained a "Notice of Baggage Liability Limitations."[189] Such notice limited the liability of the

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181. Japan Airlines v. Simangan, 552 SCRA 341 (2008). The respondent was Jesus Simangan.

182. *Id.* at 362.

183. *Id.* at 363.

184. Philippine Airlines, Inc. v. Savillo, 557 SCRA 66 (2008). The private respondent was Simplicio Griño.

185. *Id.* at 75.

186. Pan American World Airways, Inc v. IAC, 164 SCRA 268 (1988). The private respondents were Rene V. Pangan, *Sotang Bastos* Productions, and Archer Productions.

187. *Id.* at 272.

188. *Id.* at 270-72.

189. *Id.* at 274.

carrier to US$ 20.00 per kilo, the equivalent in US dollars of the limitation figure under the Convention.[190] The notice was held to be binding on Pangan on the strength of the Court's ruling in *Ong Yiu v. Court of Appeals*[191] which upheld the validity of a similar stipulation on the back of an airline ticket limiting the liability of the carrier for lost luggage to a specific amount in the absence of a written declaration by the passenger of a higher value.[192] Moreover, the Court clarified that the *Cuenca* ruling did not serve to invalidate the Warsaw Convention and that the Court of Appeals' contention that its provisions limiting a carrier's liability[193] are against public policy, is a misconception.[194]

The Court also applied the Warsaw Convention's limitation figure on the basis of its *Ong Yiu* ruling to *Pan American World Airways, Inc. v. Rapadas*,[195] but with a difference. Since the checked-in luggage that was lost on the PANAM flight from Guam to Manila was intended by respondent Jose K. Rapadas to be hand-carried by him, he was awarded US$ 400.00 as damages corresponding to the limitation figure for unchecked luggage.[196] The Court also took note of the requirement for a declaration should the passenger want to recover a higher amount than the limitation figure.[197] It advised Rapadas that "the alleged lack of enough time for him to make a declaration of a higher value and to pay the corresponding supplementary charges cannot justify his failure to comply with the requirement that will exclude the application of limited liability."[198]

However, when the airline advises the passenger that it is not necessary to make a declaration of higher value, it is estopped from taking advantage of the absence of such a declaration by limiting the claim to the Warsaw limitation figure.[199] The airline also waives the application of the Warsaw Convention if it offers as settlement of a passenger's claim an amount higher than the relevant limitation figure provided in Article 22 of the Convention and fails to raise timely objections during trial when evidence is being

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190. *Id.*

191. Ong Yiu v. Court of Appeals, 91 SCRA 223 (1979).

192. *Id.* at 274-75 (citing *Ong Yiu*, 91 SCRA 223). Note that this does not involve Warsaw carriage.

193. *See* Warsaw Convention, art. 22, ¶¶ 2-3.

194. *Pan American World Airways, Inc.*, 164 SCRA at 274-77.

195. Pan American World Airways, Inc. v. Rapadas, 209 SCRA 67 (1992). The private respondent was Jose K. Raspadas.

196. *Id.* at 77-78.

197. *Id.* at 77.

198. *Id.* at 76.

199. Philippine Airlines, Inc. v. Court of Appeals, 255 SCRA 48, 62 (1996). The private respondent was Gilda C. Mejia.

presented on the actual claims and damages sustained by the passenger or consignor.[200]

In case of delay in the delivery of passenger's luggage by 11 days, the Court absolved PAL from liability for moral and exemplary damages since it immediately tried to trace the missing luggage and constantly informed the passenger on the progress of the search.[201] The passenger was awarded US$ 200.00 as actual damages[202] which would have been less than the Warsaw limitation figure for delay.[203]

In *China Airlines Ltd. v. Intermediate Appellate Court*,[204] respondent Claudia B. Osorio missed her connecting flight on China Airlines (CAL) from Taipei to Los Angeles due to a four-day delay in the departure of her CAL flight from Manila.[205] Prior to leaving Manila, she agreed to be rerouted from Taipei to San Francisco where she was promised an immediate connection to Los Angeles (LA).[206] Unfortunately, when she arrived in San Francisco (SFO), petitioner CAL's SFO office had not received any instructions about the rerouting due to a delay in the transmission of telex messages.[207] She was forced to spend the night in SFO but in her anger, omitted to furnish a contact address with the local CAL office.[208] Hence, CAL's SFO office could not reach her when it received instructions from its Manila office to issue the tickets for LA five hours after her arrival in SFO.[209] When she finally learned about the issuance, she decided to proceed to LA on another carrier.[210]

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200. Lufthansa German Airlines v. Intermediate Appellate Court, 207 SCRA 350, 358 (1992). The private respondents were the spouses Henry H. Alcantara and Teresita Alcantara.

201. Philippine Air Lines v. Miano, 242 SCRA 235, 238-39 (1995). The private respondent was Florante A. Miano.

202. *Id.* at 240.

203. The Warsaw limitation figure for delay is approximately US$ 16.00/kg. Assuming that Miano's luggage reached the maximum allowable baggage allowance of 20 kg., he would have been entitled to US$ 320.00.

204. China Airlines Ltd. v. Intermediate Appellate Court, 169 SCRA 226 (1989). The private respondent was Claudia B. Osorio.

205. *Id.* at 228-29.

206. *Id.* at 228.

207. *Id.*

208. *Id.* at 229.

209. *Id.*

210. *China Airlines Ltd.*, 169 SCRA at 229.

The Court acknowledged that CAL committed a breach of contract in failing to fulfill its promise to secure an immediate connection for Osorio.[211] Such failure was due to its total reliance on telex messages as the mode of communications between its Manila and SFO offices.[212] However, the Court considered such reliance as negligence but not so gross as to amount to bad faith and hence, deleted the award of moral and exemplary damages that was granted by the appellate court.[213] It also hinted that Osorio was partly to blame as follows —

> Contact thru telephone with Manila could not immediately be made because of the time difference and [Osorio] was accordingly advised that information from Manila could be expected at around 6:30 pm, the time that the Manila Office would have begun its office hours. This repeated advise notwithstanding, [Osorio] left the airport without leaving a contact address. In this sense, it was [Osorio] herself who rendered it impossible for [CAL] to perform its obligation of bringing her to Los Angeles as contracted for.[214]

In another case involving CAL,[215] a passenger on a discounted GV-10 ticket requested for a change of schedule despite the limitations on his ticket.[216] When he wanted the change in schedule to be reflected on his ticket, he was provided with a typewritten note which showed a revised schedule.[217] Unfortunately, the change of schedule was not honored by CAL and the passenger returned to Manila on Philippine Airlines.[218] When the appellate court granted his claim for moral and exemplary damages, the Supreme Court set aside the award on the ground that CAL's bad faith was not established by clear and convincing evidence.[219] According to the Court:

> CAL had exercised diligent efforts to effect the change of schedule which it apparently had earlier stated to private respondent (prior to his departure from Manila) it would carry out. There was clearly a concerted effort among the involved CAL offices as shown by the flow of telexes from one to the others. If at the outset, petitioner CAL simply did not intend to comply with its promise to private respondent that it would accommodate

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211. *Id.* at 233.

212. *Id.*

213. *Id.* at 233-34 & 236.

214. *Id.* at 235.

215. China Airlines Limited v. Court of Appeals, 211 SCRA 897 (1992). The private respondent was Manuel J. Ocampo.

216. *Id.* at 899.

217. *Id.*

218. *Id.* at 900.

219. *Id.* at 901-05.

> his requested change of schedule, it would not have taken the trouble of composing and transmitting all those telexes between its several offices.
>
> CAL San Francisco was obviously aware of the limitations on a GV-10 CAL ticket and its employee(s) who had refused to accede summarily to respondent Ocampo's request for confirmation of his revised schedule, cannot be held guilty of bad faith; the procedure adopted of seeking verification from CAL Manila was one taken in the usual course of business and was not in itself unreasonable or arbitrary. The responsible officer(s) of CAL Manila admitted that it had initially sent an erroneous message to CAL San Francisco concerning authorization for early departure of private respondent from San Francisco. While the CAL Manila employee who had sent a mistaken telex message was negligent, there was no evidence either of deliberate malice or of gross negligence. The last two telexes sent by CAL Manila to CAL San Francisco on 17 May and 18 May 1979 were presumably received by CAL San Francisco in time to have relayed to respondent Ocampo his acceptance as a passenger on the CAL flight out of San Francisco scheduled for 18 May 1979. Again, however, we do not believe that respondent Ocampo had convincingly shown that the employees of petitioner CAL were motivated by personal malice or bad faith, or that there was patently negligence so gross as to amount to bad faith.[220]

In *Air France v. Court of Appeals*,[221] Petitioner Air France was not in breach of contract when it did not agree to a rerouting of the itinerary of respondent Morales as certain segments reflected on his ticket were restricted as non-endorsable and valid on Air France only.[222] The Court observed that "mere refusal to accede to the passenger's wishes does not necessarily translate into damages in the absence of bad faith."[223] No improper conducted was imputed to Air France in denying Morales' request to reroute.[224] Indeed, the Court noted the significance of Morales' profession as a lawyer "who cannot feign ignorance of such limitations and restrictions" clearly indicated on the ticket since "omissions by ordinary passengers may be condoned but more is expected of members of the bar."[225]

In *Sarreal, Sr. v. Japan Airlines Co., Ltd (JAL)*,[226] Petitioner Lope Sarreal, Sr. claimed that his JAL ticket was endorsed to Thai International for a flight

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220. *Id.* at 904-05.

221. Air France v. Court of Appeals, 171 SCRA 399 (1989). The private respondent was Narciso O. Morales.

222. *Id.* at 405-06.

223. *Id.* at 406.

224. *Id.*

225. *Id.* at 407.

226. Sarreal, Sr. v. Japan Air Lines Co., Ltd, 207 SCRA 359 (1992). The petitioner was Lope Sarreal, Sr.

from Bangkok to Manila.[227] However, he could not board said flight even though it had available seats because according to Thai International, his ticket was non-endorsable.[228] Based on an examination of the ticket, the Court found no endorsement at all on it since it was a discounted ticket.[229]

Discounted tickets are usually non-endorsable. Neither did it contain any assurance from respondent JAL that Sarreal, Sr. had a confirmed seat on the flight in question.[230] What it had was a stub with the letters "RQ" under the column "status."[231] They stand for "Request."[232] This means that the passenger was wait-listed, i.e., with no confirmed seat.[233] Since Sarreal, Sr. was a frequent traveler, he should be familiar with travel procedures including confirming a seat on a flight.[234] No damages were awarded.[235]

In *Tan v. Northwest Airlines, Inc.,*[236] the Court agreed with the appellate court's deletion of the award of moral and exemplary damages by the trial court.[237] The delivery of Petitioner Priscilla L. Tan's baggage was delayed when it was not loaded on the flight she took due to weight and balance restrictions.[238] The delay due to safety concerns did not constitute willful misconduct since "for willful misconduct to exist, there must be a showing that the acts complained of were impelled by an intention to violate the law, or were in persistent disregard of one's rights. It must be evidenced by a flagrantly or shamefully wrong or improper conduct."[239]

The pattern is clear. With respect to Warsaw carriage of passengers and their luggage, the Supreme Court will not apply the Warsaw Convention exclusively.[240] Indeed, it may disregard it altogether if the incident that gave rise to the suit is not expressly covered by the Convention.[241] Moral and

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227. *Id.* at 361.

228. *Id.*

229. *Id.* at 363.

230. *Id.*

231. *Id.* at 364.

232. *Sarreal, Sr.*, 207 SCRA at 364.

233. *Id.*

234. *Id.*

235. *Id.* at 364-65.

236. Tan v. Northwest Airlines, Inc., 327 SCRA 263 (2000). The petitioner was Priscilla L. Tan.

237. *Id.* at 268.

238. *Id.* at 266-67.

239. *Id.* at 267.

240. *See Tan v. Northwest Airlines, Inc.*, 327 SCRA at 267-68.

241. *See Tan v. Northwest Airlines, Inc.*, 327 SCRA at 267-68.

exemplary damages, whose amount is a matter of judicial discretion, will be awarded if bad faith or willful misconduct accompanies the breach of contract.[242] Rude behavior or discourteous conduct on the part of airline employees and agents is bad faith.[243] Nominal damages are also awarded for special species of injury even in the absence of bad faith on the part of the carrier.[244]

III. CARRIER'S LIABILITY EXTENDED

Although one of the main objectives of the Convention is the limitation of the air carrier's liability, a refusal by the Supreme Court to enforce one of its Articles has led to the extension of such liability.[245]

On 22 July 1975, the Philippine Supreme Court promulgated *KLM Royal Dutch Airlines v. Court of Appeals*,[246] wherein Article 30 of the Convention[247] was not applied to a round-the-world tour undertaken by the respondent Mendoza couple since the case did not involve an accident or delay but willful misconduct on the part of petitioner KLM's agent, Aer

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242. *Tan*, 327 SCRA at 268.

243. *See Northwest Orient Airlines*, 186 SCRA at 444; *Philippine Air Lines*, 207 SCRA at 104-05.

244. *See Alitalia*, 192 SCRA at 20.

245. *See* KLM Royal Dutch Airlines v. Court of Appeals, 65 SCRA 237 (1975).

246. *KLM Royal Dutch Airlines*, 65 SCRA 237. The private respondents were Consuelo T. Mendoza and Rufino T. Mendoza.

247. Warsaw Convention, art. 30. This Article provides that:

> (1) In the case of transportation to be performed by several successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage, or goods shall be subject to the rules set out in this convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under its supervision.
>
> (2) In the case of transportation of this nature, the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.
>
> (3) As regards baggage or goods, the passenger or consignor shall have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery shall have a right of action against the last carrier, and further, each may take action against the carrier who performed the transportation during which the destruction, loss, damage, or delay took place. These carriers shall be jointly and severally liable to the passenger or to the consignor or consignee. *Id.*

Lingus, who did not allow the couple to board its flight from Barcelona to Lourdes where they had confirmed seats.[248] When they were denied boarding, they took a train to Lourdes where they arrived the morning after they were denied access to the flight.[249] Hence, they were delayed in reaching Lourdes.[250] However, the Court observed that there was no delay in the flight from Barcelona Airport.[251] What is clear to the Court is that Aer Lingus did not comply with its obligation to transport the couple to Lourdes.[252]

KLM claimed that its liability as carrier is restricted to occurrences on its own flights and therefore, it does not assume liability for occurrences on the flights of other carriers.[253] However, the Court construed one of the Conditions of Contract on the tickets issued by KLM, which provides that the "carriage to be performed hereunder by several successive carriers is to be regarded as a single operation,"[254] in the following manner —

> [T]he passage tickets … provide that the carriage to be performed thereunder by several successive carriers 'is to be regarded as a single operation,' which is diametrically incompatible with the theory of the KLM that the respondents entered into a series of independent contracts with the carriers which took them on various segments of their trip. This position of KLM we reject. The respondents dealt exclusively with the KLM *which issued them tickets for their entire trip and which in effect guaranteed to them that they would have sure space in Aer Lingus flight 861*. The respondents, under that assurance of the internationally prestigious KLM, naturally had the right to expect that their tickets would be honored by Aer Lingus *to which, in the legal sense, the KLM had indorsed and in effect guaranteed the performance of its principal engagement to carry out the respondents' scheduled itinerary previously and mutually agreed upon between the parties*.[255]

The Condition of Contract construed by the Court is part of the definition of successive carriage in the third paragraph of Article 1 of the Convention.[256] Article 1 is under Chapter I of the Convention with the heading "Scope — Definitions."[257] Obviously, the purpose of Chapter I is to define the scope of Warsaw carriage. The third paragraph extends the scope

248. *KLM Royal Dutch Airlines,* 65 SCRA at 244.

249. *Id.* at 240.

250. *Id.*

251. *Id.* at 243.

252. *Id.* at 243-44.

253. *Id.* at 241.

254. *KLM Royal Dutch Airlines,* 65 SCRA at 243.

255. *Id.* at 243-44 (emphasis supplied).

256. Warsaw Convention, art. 1, ¶ 3.

257. *Id.*

of Warsaw carriage to include successive carriage. The rationale for regarding as a single operation, carriage performed in separate stages by more than one carrier, is to avoid confusion on the scope of Warsaw carriage.[258] If successive carriage is not regarded as a single operation, then one stage of the carriage which is performed entirely within the territory of one High Contracting Party may not be considered as Warsaw carriage[259] although a different interpretation may arise if that stage is considered as part of a single journey whose itinerary covers several stages.[260] The Court seems to have construed this particular Condition of Contract without reference to Chapter I of the Warsaw Convention.

The Court also held that the Mendoza couple "cannot be bound by the provision in question by which KLM unilaterally assumed the role of a mere ticket-issuing agent for other airlines and limited its liability only to untoward occurrences on its own lines."[261] Yet the Court acknowledged barely a month prior to the promulgation of this decision that "under the so-called pool arrangement among different airline companies pursuant to the International Air Transport Association (IATA) agreement of which Alitalia and Lufthansa are signatories, both companies are constituted thereby as agents of each other in the issuing of tickets."[262] If the Court was aware of the pool arrangement, how can it conclude that KLM who is also a member of IATA "unilaterally assumed the role of a mere ticket issuing agent"?[263]

The contractual provision limiting the liability of KLM "only to untoward occurrences on its own lines" was not considered as binding on the Mendoza couple since they could not have read this limitation as written on their tickets since it "was printed in letters so small that one would have to use a magnifying glass to read the words."[264] KLM also did not exert any effort to actually inform the couple of this condition.[265] But this Provision is merely a restatement of the second paragraph of Article 30 of the Convention[266] which is part of Philippine law.[267] Proof of that can be found in the text of the provision itself which states that "liability of carrier for

258. *See* GOLDHIRSCH, *supra* note 18.

259. *Mapa*, 275 SCRA at 301.

260. *See* Lowenfeld & Mendelsohn, *supra* note 10, at 501.

261. *KLM Royal Dutch Airlines*, 65 SCRA at 243.

262. *Ortigas, Jr.*, 64 SCRA at 643.

263. *KLM Royal Dutch Airlines*, 65 SCRA at 243.

264. *Id.*

265. *Id.*

266. Warsaw Convention, art. 30, ¶ 2.

267. *See Santos III*, 210 SCRA at 260-61 where the Supreme Court has recognized that the Warsaw Convention has the force and effect of law in the Philippines.

damages shall be limited to occurrences on its own line, *except in the case of checked baggage as to which the passenger also has a right of action against the first or last carrier*."[268] This reference to checked baggage is again a restatement of the third paragraph of the said Article 30.[269] Since this provision is not just a contractual stipulation but actually a law, there was no need to prove that the Mendoza couple actually knew of it.[270] Ignorance of the law excuses no one.[271]

KLM could have been liable for Aer Lingus' acts if by express agreement, it assumed liability for the whole journey.[272] It is submitted though that the mere issuance of the ticket does not constitute that express agreement. Express agreement should mean that the first carrier[273] explicitly assumes liability for any claims that may arise at any stage of the journey even though it is not the carrier for every stage of such journey.[274]

The *KLM* ruling was dutifully observed in *Lufthansa German Airlines v. Court of Appeals*[275] where the passenger was denied boarding one of the flights in his itinerary.[276] Since petitioner Lufthansa issued the ticket, it was held liable for the refusal of Air Kenya to accommodate respondent Antiporda on its flight from Bombay to Nairobi since it "guaranteed him a sure seat with Air Kenya."[277]

The Court had the following comments on the pool arrangement under IATA —

> [U]nder the pool arrangement of the International Air Transport Association (IATA), of which Lufthansa and Air Kenya are members, member airlines are agents of each other in the issuance of tickets and

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268. *KLM Royal Dutch Airlines*, 65 SCRA at 243 (emphasis supplied).

269. Warsaw Convention, art. 30, ¶ 3.

270. *Contra KLM Royal Dutch Airlines*, 65 SCRA at 241.

271. CIVIL CODE, art. 3.

272. *See* Warsaw Convention, art. 30.

273. GOLDHIRSCH, *supra* note 18, at 159. It provides that the first carrier is the carrier designated in the ticket or airway bill to perform the first leg of the trip. *See also* Lufthansa German Airlines v. Court of Appeals, 238 SCRA 290, 292-93 (1994), which shows that the first carrier is not necessarily the ticket-issuing carrier.

274. GOLDHIRSCH, *supra* note 18, at 162 (citing Orent v. Sabena, 8 Avi.17273 (D.C. N.Y. 1962) (U.S.) & Riediger v. TWA, 6 Avi. 17315 (N.Y. Sup. Ct. 1959) (U.S.)).

275. Lufthansa German Airlines v. Court of Appeals, 238 SCRA 290 (1994). The private respondent was Tirso V. Antiporda.

276. *Id.* at 293.

277. *Id.* at 297.

> therefore, in accordance with *Ortigas v. Lufthansa, an airline company is considered bound by the mistakes committed by another member of IATA which on behalf of the former, had confirmed a passenger's reservation for accommodation.*[278]

From this observation, the Court declared that —

> Lufthansa is clearly the principal in the contract of carriage with Antiporda and remains to be so, regardless of those instances when actual carriage was to be performed by various carriers. The issuance of a confirmed Lufthansa ticket in favor of Antiporda covering his entire five-leg trip aboard successive carriers concretely attests to this. This also serves as proof that Lufthansa, in effect guaranteed that the successive carriers, such as Air Kenya would honor his ticket; assure him of a space therein and transport him on a particular segment of his trip.[279]

Thus, in *British Airways v. Court of Appeals,*[280] when respondent Mahtani lost his luggage on his journey from Manila to Bombay, he sued British Airways (BA) who filed a third-party complaint against PAL[281] The Court maintained its position that the ticket issuing carrier (BA) as the principal should be held responsible to Mahtani for the loss of his luggage.[282] But the Court recognized that the ticket-issuing carrier can file a third-party complaint against the other carrier.[283] However, what specific act of bad faith was committed by either BA or PAL to justify the award of moral and exemplary damages[284] was not touched upon by the Court.

The relationship of the ticket-issuing carrier as principal *vis-à-vis* the other carriers who act as its agents in transporting the passenger under the terms of the ticket was stretched to the limit in *American Airlines v. Court of Appeals.*[285] This time, the issue was jurisdiction.[286] Respondent Democrito Mendoza sued American Airlines (AA) in Manila for breach of contract of carriage but the airline questioned the jurisdiction of the Philippines courts under the first paragraph of Article 28 of the Warsaw Convention.[287]

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278. *Id.* at 295 (emphasis supplied). In *Ortigas, Jr.,* Lufthansa was not the ticket-issuing carrier but Trans World Airlines. *See Ortigas, Jr.*, 64 SCRA at 638.

279. *Id.* at 300.

280. British Airways v. Court of Appeals, 285 SCRA 450 (1998). The private respondents were Gop Mahtani and Philippine Airlines.

281. *Id.* at 455-56.

282. *Id.* at 463-64.

283. *Id.* at 465.

284. *Id.* at 456.

285. American Airlines v. Court of Appeals, 327 SCRA 482 (2000). The private respondent was Democrito Mendoza.

286. *Id.* at 485.

287. *Id.* at 486 (citing Warsaw Convention, art. 28, ¶ 1).

Mendoza purchased from petitioner AA in Geneva a one-way ticket from Geneva to New York.[288] He paid for the ticket with cash together with the unused portion of his previous ticket issued by Singapore Airlines in Manila with the following itinerary: Manila-Singapore-Athens-Larnaca-Rome-Turin-Zurich-Geneva-Copenhagen-New York.[289] According to the Court, the carriage covered by the two tickets constitutes a single operation.[290] AA's ticket though issued in Geneva is merely a replacement of the unused portion of the ticket issued by Singapore Airlines.[291] By accepting such unused portion which can be used by AA through the IATA pool arrangement as payment for the ticket it issued to Mendoza, AA undertook to substitute for the carriers originally designated to perform the carriage covered by said portion and thereby became an agent of Singapore Airlines for such undertaking.[292] Thus, the ticket issued by AA is deemed to have been integrated into the ticket issued by its principal in Manila which now becomes the place of business through which the contract to carry Mendoza from Geneva to New York has been made.[293]

The last reported case in which the *KLM* ruling was enforced is *China Airlines v. Chiok*,[294] where respondent Daniel Chiok purchased a ticket from petitioner CAL with the route Manila-Taipei-Hong Kong-Manila.[295] PAL was scheduled to fly Chiok from Hong Kong to Manila.[296] Unfortunately, the flight was cancelled due to weather conditions and Chiok had an unpleasant experience with PAL personnel in rebooking his flight and in checking-in for said flight to Manila.[297] Under the circumstances, CAL, as the ticket-issuing carrier, was held responsible for the transgressions committed by PAL personnel.[298]

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288. *Id.* at 485.

289. *Id.*

290. *Id.* at 493.

291. *American Airlines*, 327 SCRA at 492.

292. *Id.* at 486.

293. *Id.* at 485-86, 491-93.

294. China Airlines v. Chiok, 407 SCRA 432 (2003). The petitioner was Daniel Chiok.

295. *Id.* at 434.

296. *Id.* at 435.

297. *Id.* at 435-36.

298. *Id.* at 453.

IV. JURISDICTION AND PRESCRIPTION

Santos III v. Northwest Orient Airlines[299] firmly established the principle that Article 28, Paragraph 1 of the Warsaw Convention is not a rule governing venue but is a provision that determines jurisdiction.[300] Hence, the suit was dismissed for lack of jurisdiction as Santos III purchased his round trip ticket in the United States from NOA whose domicile and principal place of business is in the United States.[301] Since both the place of business through which the contract has been made and the place of destination are situated within the United States, Philippine courts have no jurisdiction over the suit for damages filed by Santos.[302] The latest affirmation of this jurisdictional rule is *Lhullier v. British Airways.*[303]

Jurisdiction was also an issue in the previously cited *Mapa* case, but the Court reached a different conclusion. Since there was no Warsaw carriage under the circumstances surrounding the carriage in question, the Warsaw Convention did not apply, including its provision on jurisdiction.[304] Hence, TWA could not rely on Article 28, Paragraph 1 to deny jurisdiction to the Philippine courts.[305]

Needless to say, Article 28, Paragraph 1 of the Convention can only be enforced by a court within the territory of a High Contracting Party.[306] The court should also have jurisdiction over the subject matter of the suit, i.e., the court should be vested with the legal authority to hear the case.[307] Finally, the prospective defendant can be effectively served with summons to enable the court to acquire jurisdiction over such defendant.[308]

The first paragraph of Article 29 provides for a two-year prescription period for bringing an action against the carrier.[309] The Court maintained in

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299. *Santos III*, 210 SCRA 256.

300. *Id.* at 266-67. The petitioner was Augusto Benedicto Santos.

301. *Id.* at 270.

302. *Id.* at 271-72.

303. Lhullier v. British Airways, 615 SCRA 380 (2010). The petitioner was Edna D. Lhullier.

304. *See Mapa*, 275 SCRA at 295-301 (1997).

305. *Id.* at 300-01.

306. GOLDHIRSCH, *supra* note 18, at 141.

307. *Id.* at 142.

308. *Id.* at 142-43.

309. Warsaw Convention, art. 29, ¶ 1. This Article provides —

> The right to damages shall be extinguished if an action is not brought within 2 years, reckoned 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 transportation stopped.

Luna v. Court of Appeals,[310] that the Convention's prescription period will not apply if the passengers suffered some special species of injury.[311] In *United Airlines v. Uy,*[312] the Court did not also apply the two-year time bar since the cause of action is rude behavior on the part of airline employees.[313] However, even if a cause of action is covered by the prescription period, the Court will not enforce it if the carrier prevented the claimants with dilatory tactics from filing suit before the expiration of the prescription period.[314]

However, Article 29 does not apply to non-Warsaw carriage or to suits that do not arise from a contract of carriage by air.[315] Neither does it apply to transportation explicitly excluded from the application of the Warsaw Convention.[316] An example is Article 2 of the Convention which provides that "this Convention does not apply to carriage of mail and postal packages."[317]

V. COMMENTS AND CONCLUSION

The commentary focuses on the extension of the air carrier's liability under the *KLM* ruling.

It is commonly observed that the ticket-issuing carrier does not actually choose the other carriers who are scheduled to transport the passenger on their flights. The designation of the carriers is usually predetermined by the passengers through their itinerary. When a person decides to take a journey, his route limits the choice of carriers to those who operate flights on the specified route. Furthermore, if a point on the route is serviced by more than one carrier, his preferred carrier is usually the one that is actually engaged to perform that stage of the journey since the passenger is the customer. If there is only one carrier who maintains a flight to that point, neither the passenger nor the carrier has a choice unless the passenger changes his itinerary.

What would have been the case if it was proven that the Mendoza couple specified Aer Lingus to fly them from Barcelona to Lourdes? Would

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Id.

310. Luna v. Court of Appeals, 216 SCRA 107 (1992). The other petitioners were Rodolfo J. Alfonso and Porfirio Rodriguez, while the private respondent was Northwest Airlines, Inc.

311. *Id.* at 111. *See Philippine Airlines, Inc.*, 557 SCRA at 66, where the Supreme Court reiterated this same principle.

312. United Airlines v. Uy, 318 SCRA 576 (1999).

313. *Id.* at 586.

314. *Id.* at 587-88.

315. GOLDHIRSCH, *supra* note 18, at 151.

316. *Id.*

317. Warsaw Convention, art. 2.

KLM still be liable under that circumstance? If one of the successive carriers secured the services of a substitute carrier[318] to transport the Mendoza couple at one stage of their journey, would the ticket-issuing carrier still be held liable for the willful misconduct of the employees of the substitute carrier who was chosen by the successive carrier? What would be the extent of liability of the ticket-issuing carrier?

Another consideration is availability of space. Whether it is the ticket-issuing carrier or the passenger who chooses the other carriers who will service the various stages of the journey, such choice is dependent on the availability of space on those carriers. In other words, it is actually the other carriers who choose to accommodate the passenger since they will be the ones who can confirm whether or not the passenger can fly with them. Therefore, it is not the ticket-issuing carrier who can guarantee a seat on those flights that they do not operate since the ticket-issuing carrier is not in a position to confirm the availability of space on such flights. Indeed, the ticket-issuing carrier cannot insist that space be made available since he has no control over the operation of said flights.

The Court insists that the non-ticket-issuing carriers are mere agents or subcontractors of the ticket-issuing carrier in the performance of the contract of carriage even though a standard condition of contract in an airline ticket explicitly states that, "an air carrier issuing a ticket for carriage over the lines of another carrier does so only as its Agent."[319] It seems that the Court has turned this condition on its head by interpreting it to mean that the ticket-issuing carrier acts as the sole principal of the contract of carriage with the passenger even if the first paragraph of Article 30 of the Warsaw Convention clearly states that in successive carriage, "each carrier who accepts passengers, baggage or goods shall be ... *deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under his supervision.*"[320]

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318. *See* GOLDHIRSCH, *supra* note 18, at 160.

319. *KLM Royal Dutch Airlines*, 65 SCRA at 241. *See also* IATA General Conditions of Carriage (Passenger and Baggage), art. 16.3.1, *available at* http://www.transportrecht.de/transportrecht_content/1145517747.pdf (last accessed Nov. 7, 2010). This Article provides —

> Carrier is liable only for damage occurring on its own line. A Carrier issuing a ticket or checking baggage over the lines of another Carrier does so only as an agent for such other Carrier. Nevertheless, with respect to checked baggage, the passenger shall also have a right of action against the first or last carrier.

Id.

320. Warsaw Convention, art. 30, ¶ 1 (emphasis supplied). *See also* GOLDHIRSCH, *supra* note 18, at 161.

If the ticket-issuing carrier is the sole principal, only he can be sued on the contract of carriage.[321] Indeed, the carrier who actually was responsible for the injury, loss or damage sustained by the passenger can avoid liability if the ticket-issuing carrier cannot pursue a claim against said carrier due to some procedural technicality.[322]

What would be the situation if the passenger is the one who commits a breach of contract of carriage while on a flight operated by a non-ticket-issuing carrier and the breach does not constitute a tort? Does this mean that such carrier would have to rely on the ticket-issuing carrier to file suit against the erring passenger? What would be the remedy if the ticket-issuing carrier refuses to cooperate?

It appears that the Supreme Court has been quite reluctant to apply the Warsaw Convention to situations that involve Warsaw carriage. Although under Philippine municipal law,[323] airlines are presumed liable in most instances involving disputes arising from the performance of the contract of carriage, they are seldom able to limit their liability under the provisions of the Convention. Willful misconduct (which includes rude behavior by airline personnel) and existence of special species of injury (whose number continues to rise) more often than not, serve as the bases for denying the application of the Warsaw limitation figures. Indeed, in the unreported case of *Alitalia v. Ramon O. Fernandez and Intermediate Appellate Court*,[324] the appellate court awarded actual damages beyond the Warsaw limits because the evidence established a loss beyond said limits.[325] But the purpose of limitation is precisely to set a maximum amount for the recovery of damages despite proof that the actual amount of damages is more than the limitation figure.[326]

The objective of uniformity in international transport law may be seriously undermined should our judicial institutions continue to interpret the Warsaw Convention in such a manner as to severely restrict its scope of application. After all, "every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it

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321. *British Airways*, 285 SCRA at 464.

322. *China Airlines*, 407 SCRA at 453.

323. *See* CIVIL CODE, arts. 1732-1735 & 1755-1756.

324. Alitalia v. Ramon O. Fernandez and Intermediate Appellate Court, G.R. No. 70152, June 19, 1985.

325. Armando R. Santiago III, Limitation on Liability of International Air Carrier under the Warsaw Convention (1992) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University) (citing *Alitalia*, G.R. No. 70152).

326. *Id.* at 36.

may not invoke provisions in its constitutions or its laws as an excuse for failure to perform this duty."[327]

It is apparent from the survey of jurisprudence relating to the Warsaw Convention that the Supreme Court is not inclined towards promoting a regime of limited liability for air carriers, especially with respect to passengers' claims. It should be noted though that the Warsaw system,

> with its known limits has promoted earlier resolution of disputes and resulted in cheaper insurance premiums payable by airlines which itself has kept down the cost of air travel to the consumer. The system has provided one significant and often underestimated commodity — *predictability* which in itself provides stability and a degree of fairness.[328]

Hence, should the Court persist in restricting the opportunities for the airline industry to avail itself of the Warsaw limits on liability, the cost of air travel will almost certainly increase as insurers recognize the enhanced risk of incurring unlimited liability by airlines operating to and from the Philippines. The element of predictability will also be undermined as the providers of airline services are faced with the daunting task of trying to secure adequate insurance cover against claims that, more often than not, will not be limited.

327. JOAQUIN G. BERNAS, S.J., FOREIGN RELATIONS IN CONSTITUTIONAL LAW 18 (1995 ed.) (citing International Law Commission, *Declaration of Rights and Duties*, art. 13, *adopted at the first Session of the International Law Commission*, G.A. Res. 375 (IV) (Dec. 6, 1949).

328. BLACKSHAW, *supra* note 33, at 222.