

TITLE TO SUE UNDER THE WARSAW CONVENTION: CONSTRUING A DINOSAUR TEXT IN THE DIGITAL AGE

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1 INTRODUCTION

The Warsaw Convention system¹ has provided a uniform liability regime for international air carriage claims since 1929. However, seven decades later, there is still considerable controversy and uncertainty over the extent to which the Convention system operates as an exclusive code, and its effect on common law causes of action and remedies.

One of the recurring issues in the exclusivity debate relates to title to sue the carrier for loss of or damage to goods. The Warsaw Convention expressly confers rights of action against the carrier on the *expéditeur* (consignor) and the *destinataire* (consignee) identified in the air waybill evidencing the relevant carriage contract.² But the Convention is silent as to whether other parties with an interest in the goods – typically, cargo owners who have not been named as consignor or consignee in the air waybill or have merely been stipulated in the “notify party” box on the waybill – are also entitled to sue the carrier. Does this silence mean that the relevant Convention provisions should be construed as exhaustively defining the categories of potential plaintiffs entitled to sue the carrier, thereby excluding other parties who would otherwise have had a common law action? Or were the references in the Convention to the consignor and consignee’s rights of action intended to be enabling rather than prescriptive? Finally, if the Convention does not exclude other parties from bringing common law actions, to what extent are such actions modified or limited by the Convention scheme?

¹ The “Warsaw Convention system” refers to the entire complex and increasingly ramshackle framework of rules created by the Warsaw Convention itself (Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, 1929), the supplementary Guadalajara Convention 1961 and the various Hague, Guatemala City, and additional Montreal Protocols. For an excellent analysis of the many problems associated with the development and revision of this system, see R Gardner, “Revising the Law of Carriage by Air: Mechanisms in Treaties and Contract” (1998) 47 ICLQ 278. New Zealand has given domestic effect to the Warsaw and Guadalajara Conventions, as amended by the Hague Protocol and the additional Montreal Protocols Nos 1, 2 and 4: see the Civil Aviation Act 1991, Part 9A and Schedules 4, 5. It is envisaged that the Warsaw Convention system will be replaced by the Montreal Convention (Convention for the Unification of Certain Rules Relating to International Carriage by Air, Montreal, 1999), which provides a much needed consolidation and modernisation of the current rules. The Montreal Convention is not yet in force, however, and has to date not been signed by New Zealand.

² See Articles 12, 13, 14, 15 and 30.

2 PREVIOUS AUTHORITIES

The authorities on this issue are sharply divided. While Civilian jurisprudence has consistently tended to the view that the Convention was intended to operate as an exclusive code, thereby restricting rights of action to the consignor and consignee named in the air waybill exclusively,³ courts in Common Law jurisdictions have, for the most part, traditionally adopted a non-exclusive reading of the Convention.⁴

The traditional Common Law approach to this issue is exemplified by the New Zealand case of *Tasman Pulp & Paper Co Ltd v Brambles JB O’Loghlen Ltd*,⁵ where the High Court declined to dismiss a cargo owner’s action against the carrier, despite the fact that the owner had not been identified as consignor or consignee in the relevant waybill. Prichard J was not satisfied that it followed from the fact that the Convention scheme expressly conferred rights of action on the consignor and consignee only, that cargo owners were necessarily precluded from exercising common law rights of action against the carrier. Such an abrogation of common law rights would have to be “expressed in clear and unambiguous language ... or ... be so clearly inferred as to lead to an inescapable conclusion”.

Prichard J’s analysis in *Tasman* was later adopted in England in *Gatewhite Ltd v Iberia Airlines Aereas de Espana Soc*,⁶ where Gatehouse J said that a goods owner named as “notify party” but not as consignor or consignee in the waybill was nonetheless entitled to sue the carrier in his own name. According to Gatehouse J, the Convention scheme did not cover the situation in this case. The cargo owner’s right of action could have been, but was not expressly excluded in the Convention. This created a *lacuna* which could be resolved by recourse to domestic law. Gatehouse J also seems to have been strongly influenced by the practical ramifications of a restrictive reading of the Convention, which would necessarily require the owner to depend on the ability and willingness of the consignee to take action against the carrier. In Gatehouse J’s view, this would give rise to a “curious and unfortunate

³ For a discussion of the Civilian jurisprudence, see R Wilkinson “The Cargo Owner’s Right to Sue under the Warsaw Convention” (1992) 17 *Annals of Air & Space Law* 441 at 466-469; *Western Digital Corp v British Airways plc* [2000] 2 *Lloyd’s Rep* 142, 157-158.

⁴ For an overview of the relevant Common Law authorities, see Wilkinson, *supra* n 3, at 452-466; *Western Digital Corp (CA)*, *supra* n 3, at paras 64-79 158-161. See also *George Straith Ltd v Air Canada* [1991] ACWSJ LEXIS 14679, 20 September 1991. This division in the authorities may be explained to some extent by general underlying differences in Civilian and Common Law theories of standing. In terms of Civilian theory, the plaintiff’s right of action is exclusively sourced in the carriage contract. The plaintiff is therefore normally required to be identified as a party to the carriage contract. The Common Law view, however, is that a proprietary interest in goods is sufficient to found a cause in action in tort or bailment, regardless of whether the plaintiff is also a party to the carriage contract: see *Sidhu v British Airways plc*, *Abnett (known as Sykes) v Same* [1997] AC 430 at 450G; *Western Digital Corp (CA)*, *supra* n 3, at 155, 157-158.

⁵ [1981] 2 NZLR 225 at 235. See Wilkinson, *supra* n 3, at 448-452.

⁶ [1990] 1 QB 326 at 334-335. See D Reynolds “Title to Sue in the Warsaw Convention System: Opening the Gate Wide?” [1989] LMCLQ 37.

situation”, particularly where a “nominal consignee” was involved, such as a customs agent, freight forwarder or financing bank.

More recently, however, considerable doubt has been cast on the correctness of the decisions in *Tasman* and *Gatewhite*. In *Sidhu v British Airways plc, Abnett (known as Sykes) v Same*,⁷ the House of Lords refused to uphold the plaintiffs’ personal injury claims which were time-barred under the Convention but were brought within the common law limitation period. Lord Hope of Craighead, with whom the other members of the House concurred, acknowledged that this conclusion was unattractive at first glance. However, on an analysis of the Convention text, the travaux préparatoires and relevant authorities, his Lordship concluded that the Convention was designed as a uniform liability regime which struck a balance between the parties’ competing interests. This inevitably involved a compromise: in exchange for the imposition of strict liability on the carrier in defined circumstances, plaintiffs had to accept limits on both the quantum of the carrier’s liability and the situations in which a remedy would be available. Where the Convention did not provide the plaintiff with a remedy, domestic courts were not free to supplement or ameliorate the Convention scheme by recourse to domestic law, as this would undermine the Convention, distort its operation and encourage further litigation to restrict its application.

In reviewing the relevant authorities, Lord Hope noted that the Court of Session in *Abnett* had distinguished *Gatewhite* on the ground that it dealt with a “quite separate aspect” of the Convention – title to sue as opposed to the availability of common law remedies outside the Convention scheme – and had acknowledged that the area of title to sue was one in which the Convention was not necessarily exhaustive. His Lordship plainly disagreed with this analysis:⁸

This decision [in *Gatewhite*], however, does not sit easily with the idea that the object of the Convention, in the areas with which it deals, was to provide uniformity of application internationally. ... It would seem to be more consistent with the purpose of the Convention to regard it as providing a uniform rule about who can sue for goods which are lost or damaged during carriage by air, with the result that the owner who is not a party to the contract has no right to sue in his own name.

We were not asked to review the *Gatewhite* case in detail however, and as the point was not fully argued I would not wish to cast further doubt on the decision which Gatehouse J. reached. It is sufficient for present purposes to say that I am not persuaded that we should apply his reasoning to the question which is before us here...

In *Emery Air Freight Corp v Nerine Nurseries Ltd*⁹ the New Zealand Court of Appeal similarly refused to uphold a consignor’s common law claim in

⁷ Supra n 4. See K Campbell “Glasgow, Kuwait and the Warsaw Convention” [1996] LMCLQ 318 on the Court of Session interlocutors in *Abnett*.

⁸ Supra n 4, at 450F-451A.

⁹ [1997] 3 NZLR 723 (CA). See P Myburgh “Exclusivity of the Warsaw Convention” [1998] LMCLQ 476; *Emery Air Freight Corp v Merck Sharpe & Dohme (Australia) Pty Ltd* (1999) 47 NSWLR 696 (CA) at 711-713.

bailment against a carrier on which the Convention scheme did not impose liability. As the claim was brought by the consignor, the issue of title to sue did not arise directly, and Blanchard J said that it was unnecessary to determine whether *Tasman* and *Gatewhite* were still good authority. However, the Court of Appeal clearly favoured the House of Lords' interpretation in *Sidhu* of the Convention as a comprehensive uniform regime, providing "the exclusive cause of action and sole remedy" in air carriage claims and barring any recourse to domestic law.

3 WESTERN DIGITAL

After the decisions in *Sidhu* and *Emery* and the recent adoption of a similar approach to the exclusivity question by the US Supreme Court,¹⁰ it seemed highly likely that *Tasman* and *Gatewhite* would be overruled or significantly qualified when the issue next arose, and that the debate over exclusivity had probably been laid to rest by Lord Hope's strong statements in *Sidhu*. Unfortunately, however, the recent decision of the English Court of Appeal in *Western Digital Corp v British Airways plc*¹¹ demonstrates that this expectation was optimistic, and that the issue remains unresolved.

The action in *Western Digital* arose out of a shipment of computer equipment from the second claimant, Western Singapore, to the third claimant, Western Netherlands. Each was a subsidiary of the first claimant, Western Digital. Western Singapore employed LEP as freight forwarders to arrange carriage on its behalf. LEP issued two house air waybills covering the shipment, which named Western Singapore as the consignor and Express Cargo Forwarding, a freight forwarder employed by Western Netherlands, as the consignee. The house waybills referred to a master air waybill issued by LEP on behalf of Qantas, which named LEP as the consignor and Express Cargo Forwarding as consignee. The waybills issued were not negotiable. The equipment was eventually carried by British Airways, but part of the consignment went missing. Western Digital sued British Airways, which raised two issues in defence:

- (1) The initial complaint made to British Airways failed to meet the requirements and purpose of Article 26 of the Convention and the plaintiffs' claim was therefore barred;
- (2) The plaintiffs, while the owners of the goods, lacked title to sue as they were not named as consignor or consignee in the carriage contract evidenced by the master air waybill.

¹⁰ *El Al Israel Airlines Ltd v Tsui Yuan Tseng* 525 US 155; 119 S Ct 662 (1999). See LB Zerner "Tseng v. El Al Israel Airlines and Article 25 of the Warsaw Convention: A Cloud Left Uncharted" (1999) 14 American University International LR 1245.

¹¹ *Supra* n 3.

As to the first issue, Article 26 of the Convention requires the consignee to complain in writing to the carrier within 14 days of discovery of the loss or damage.¹² Here, Express Cargo Forwarding notified the carrier in writing within 14 days that the “consignment was received in a condition which obliges us to reserve the right to claim against you as carriers” and advised that further particulars would follow. A second, more detailed letter enclosing documentation in support of the claim was sent one month after delivery. British Airways argued that the initial complaint was vague and misleading and provided insufficient information for the claim to be investigated.

At first instance,¹³ Steel J acknowledged that the complaint was probably objectively inadequate and would have been ruled insufficient if the carrier had failed to undertake any enquiries, but said that the carrier could not raise the issue if it had, in fact, subsequently investigated the claim, as it appeared to have done here.

On appeal, Mance LJ disagreed, observing that the complaint need only be framed in general terms, but “must at least embrace the damage to which the subsequent action relates”.¹⁴ Here the complaint, so far as it went, indicated a problem about the condition of the goods, not their arrival. His Lordship said that the adequacy of notice given under Article 26 ought to be tested objectively, and that the plaintiff bore the onus of demonstrating that its complaint was adequate. He concluded that a failure to comply with Article 26 was fatal to the plaintiffs’ claim and dismissed it on this ground.

Although it may appear draconian, the Court of Appeal’s approach is to be preferred. Steel J’s reference to the carrier’s subsequent conduct to determine whether the issue of inadequacy of the prior complaint can be raised seems circular, and at odds with the ordinary meaning and the purpose of Article 26. Article 26 is drafted in peremptory terms, creating a mandatory prerequisite that all claims other than those involving carrier fraud must meet, failing which “no action shall lie against the carrier”.

In respect of the second issue of the plaintiff’s title to sue, Steel J at first instance took his cue from Lord Hope’s general observations in *Sidhu* about the nature of the Warsaw Convention regime:¹⁵

The language used and the subject matter with which it deals demonstrate that what was sought to be achieved was a uniform international code, which could be applied by the courts of all the high contracting parties without reference to the rules of their own domestic law. The Convention does not purport to deal with all matters relating to contracts of international carriage by air. But in those areas with which it deals ...

¹² As Lord Wilberforce explained in *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 272H, the purpose of notice under Article 26 is: “(1) To enable the airline to check the nature of the ‘damage’; (2) To enable it to make inquiries how and when it occurred; (3) To enable it to assess its possible liability, to make provision in its accounts and if necessary to claim on its insurers; (4) To enable it to ensure that relevant documents (for example, the baggage checks or passengers ticket, or the air waybill) are retained until the issue of liability is disposed of.”

¹³ *Western Digital Corp v British Airways plc* [1999] 2 Lloyd’s Rep 380 (Comm Ct).

¹⁴ *Supra* n 3, at 166.

¹⁵ *Supra* n 4, at 453C-D.

the code is intended to be uniform and to be exclusive also of any resort to the rules of domestic law.

Construing Articles 18 and 24 of the Convention¹⁶ in accordance with these statements, Steel J said that a claim for loss of or damage to goods can only be brought subject to the conditions and limits set out in the Convention, and that these conditions and limits included Article 30(3), which confers rights of action on the consignor and the consignee entitled to delivery only. Steel J rejected the plaintiffs' submission that Article 30(3) is only prescriptive of rights of suit in cases of successive carriage as defined in Article 1(3), rightly observing that no sensible construction of the Convention can apply a different limitation on title to sue in cases of single and successive carriage. Steel J refused to construe the Convention as leaving open the possibility of a domestic law action by other parties, as this would involve an unwarranted acceptance that the Convention regime was neither comprehensive nor exclusive on this point.

On this analysis, the only question which remained to be decided was whether the term "consignee", which is not defined in the Convention, might be broad enough to encompass the principal (either Western Singapore or Western Netherlands) of the consignee named in the air waybill (Express Cargo Forwarding). Steel J was willing to accept that "consignee" included the endorsee of an air waybill, as the endorsee would have been identified as the party who was entitled to delivery under the carriage contract. The fact that the plaintiff was an undisclosed principal of the consignee named in the waybill, however, was insufficient to confer title to sue, because "the carrier must know the identity of the person or organization with which it is dealing, not least for the purpose of effecting delivery".¹⁷

The Court of Appeal, however, saw the matter rather differently. While accepting that the House of Lords had decided in *Sidhu* that the Convention is a code which supersedes domestic law rules relating to the nature and standard of carrier liability, Mance LJ distinguished *Sidhu* on the ground that carrier liability and title to sue the carrier are different issues. His Lordship held that either Western Singapore or Western Digital was entitled to sue under the Convention as the principal of the named consignee. The fact that the claimant's status as principal may not have been disclosed to the carrier was neither here nor there. In the light of Lord Hope's express disapproval in *Sidhu*, the Court was slightly more diffident about the issue of a third party relying solely on its proprietary interest in the goods to found a common law right of action against the carrier, but nonetheless concluded that *Tasman* and

¹⁶ Article 24 (2) provides that passengers' claims (Article 17) can only be brought subject to the conditions and limits set out in this Convention, but "without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights". Article 24(1), which covers cargo and baggage claims (Articles 18 and 19), is drafted in identical terms, but omits the passage quoted above. It may therefore be inferred from a reading e contrario that the Convention *does* govern these issues in respect of cargo and baggage claims.

¹⁷ *Supra* n 13, at 390.

Gatewhite were correctly decided and that such an action was not precluded by the Convention scheme.

In deference to *Sidhu*, however, the Court of Appeal did emphasise that, although the common law might establish an independent right of action against the carrier, the action was nonetheless brought subject to the Convention's liability scheme. The nature and standard of the carrier's liability and the availability of remedies would therefore be determined exclusively by the Convention, rather than by common law rules. This question had not been conclusively addressed in the decisions in *Tasman* and *Gatewhite*.¹⁸

The Court of Appeal's method of construing the Convention text stands in stark contrast to the purposive interpretation of the Convention adopted by the House of Lords in *Sidhu* and other recent cases.¹⁹ In terms of the purposive approach, domestic courts must attempt to give effect to the broad purpose of the Convention scheme as a whole, by reference to the text, its context, the travaux préparatoires and international authorities. According to the House of Lords, the purpose of the Convention is to create an international uniform liability regime of general application. This can only be achieved if all relevant issues are governed exclusively by the Convention scheme. Consistent with this approach, if a Convention provision refers to an issue such as title to sue, the starting point for the House of Lords is that that provision lays down a uniform rule to the exclusion of domestic law, absent contrary indications in the Convention text.

By contrast, the Court of Appeal in *Western Digital*, while acknowledging that "in certain respects" the Convention regime was intended to provide a framework of general rules rather than merely "statutory contractual terms", adopted a narrower, more disjunctive reading of the Convention text, viewing the Convention scheme as a loose framework of discrete provisions regulating different aspects of carriage claims. On this reading, although the Convention may have been intended to create an exclusive code in respect of carrier liability and available remedies (as was held in *Sidhu*), it was not necessarily intended to be exclusive in other areas, such as title to sue.

The Court of Appeal was not convinced that considerations of uniformity, simplicity and integrity of the Convention scheme required it to construe the Convention as exclusive in respect of the title to sue issue. Instead, Mance LJ focused in minute detail on the imperfections, gaps and inconsistencies of the outdated Convention text to support the proposition that, wherever possible, recourse ought to be had to domestic law in order to maintain the Convention's flexibility and allow it to respond to changes in practice.

In short, the Court of Appeal's starting point in construing the Convention text seems to have been exactly contrary to that of the House of Lords: common law rules should give way only where it is plain that the Convention text positively excludes them. This approach to construing the Convention

¹⁸ *Supra* n 3, at 159, 164-165; and see Wilkinson, *supra* n 3, at 451; Myburgh, *supra* n 9, at 478.

¹⁹ See eg *Fothergill*, *supra* n 12; *Fellowes (or Herd) v Clyde Helicopters Ltd* [1997] AC 534.

text seems wholly inappropriate, particularly when regard is had to Articles 31 and 32 of the Vienna Convention on the Law of Treaties 1969, which require domestic courts to interpret treaty terms in good faith, “in their context and in light of [the treaty’s] object and purpose” and mandate reference to the travaux préparatoires to resolve uncertainties or ambiguities.²⁰

Having discussed its view of the Convention text and how it should be construed, the Court of Appeal embarked on a thorough review of the authorities on point. It decided that these disclosed a trend away from a restrictive interpretation of the Convention. The Court said that considerations of international uniformity did not, therefore, preclude its adoption of a non-exclusive interpretation: the “new magnetic pole of international jurisprudence draws quite strongly towards conclusions that there is no such general restriction in the Convention... .”²¹ With respect, the Court of Appeal might wish to have its compass checked. In light of the significant body of Civilian jurisprudence which has consistently adopted a restrictive interpretation of the Convention, the House of Lords’ firmly expressed general views on the exclusivity of the Convention regime²² and its obvious disapproval of *Tasman* and *Gatewhite*, the sharp differences of judicial opinion in other Common Law jurisdictions and the contrary views of some leading commentators,²³ the Court’s reading of a “general readiness” to accept that third parties have title to sue under the Convention simply cannot be accepted as accurate. In any event, where, as here, there is an obvious lack of international consensus amongst domestic courts, a superficial tally of decisions for and against does little to advance the substantive debate.

In reaching its decision, the Court of Appeal also seems to have been influenced by the concerns expressed in *Tasman* and *Gatewhite* about practical difficulties which a restrictive interpretation of the Convention might cause

²⁰ On which, see R Gardiner “Treaty Interpretation in English Courts” [1994] LMCLQ 184 at 185, who criticises English courts for failing to apply the rules of the Vienna Convention, or applying them “in a rather anaemic and unsystematic fashion”. The Court of Appeal judgment contains no reference to the Vienna Convention rules and only one brief aside to the travaux préparatoires, which, to the extent that they assist, seem to favour a construction of the Convention as a uniform, exclusive code: see eg *R v Secretary of State for the Environment, Transport and the Regions; Ex Parte International Air Transport Association* [2000] 1 Lloyd’s Rep 242 at 246; Wilkinson, supra n 3, at 445-446.

²¹ Supra n 3, at 163.

²² Which have been followed in a number of subsequent decisions: see eg *Deaville v Aeroflot Russian International Airlines* [1997] 2 Lloyd’s Rep 67; *Chaudhari v British Airways plc*, Unreported, English Court of Appeal, 16 April 1997 (*The Times*, 7 May 1997); *Thomas Cook Group Ltd v Air Malta Co Ltd* [1997] 2 Lloyd’s Rep 399; *South Pacific Air Motive Pty Ltd v Magnus* (1998) 157 ALR 443 (FC); *Gal v Northern Mountain Helicopters Inc* (1999) 177 DLR (4th) 249 (BC CA); *R v Secretary of State*, supra n 20; *Post Office v British World Airlines Ltd* [2000] 1 Lloyd’s Rep 378.

²³ In this regard, the Court of Appeal merely refers at 157-158 to a single article by a French commentator criticising the Cour de Cassation’s restrictive interpretation of the Convention. For a slightly more comprehensive discussion of commentators’ opinions, see Wilkinson, supra n 3, at 446-448.

where a “nominal consignee” proves unwilling or unable to maintain a claim on behalf of the cargo owner. This suggested to Mance LJ that there were “strong considerations of commercial sense in favour of an interpretation which recognizes and gives effect to the underlying contractual structure, save in so far as this is positively inconsistent with the Warsaw and Guadalajara Conventions”.²⁴ The notion that cargo owners are to be precluded from bringing actions in their own name against the carrier because they are not identified in the waybill may seem formalistic, impractical and unfair from a Common Law perspective, but, as the House of Lord pointed out in *Sidhu*, the Convention regime represents an international compromise on liability and was not intended to provide a remedy for all plaintiffs in all circumstances. That international compromise, and the broader interests of uniformity and certainty that it represents, will inevitably be subverted by unilateral recourse to varying domestic legal rules, traditions and commercial practices. Furthermore, it could be argued that the practical difficulties alluded to by the Court of Appeal have been exaggerated, and are by no means insurmountable.²⁵

4 CONCLUSION

One of the few things that may be said with any certainty about this area of law is that the Court of Appeal decision in *Western Digital* is unlikely to represent the last word on the matter. Until the title to sue issue has been conclusively settled by the courts, or by universal adoption of the Montreal Protocol No 4 or the new Montreal Convention, both of which appear to clarify the issue,²⁶ exporters and importers would be well advised to ensure that they are formally identified as the consignor or consignee on the air waybill, or that a negotiable waybill has been issued which will be endorsed to them. Where neither of these two alternatives is practicable, parties should ensure that the intermediaries arranging their carriage are contractually obliged to maintain any carriage claims which might arise on their behalf, and that they have appropriate cover in the event of their intermediaries’ failure to do so.

²⁴ *Supra* n 3, at 162.

²⁵ See Reynolds, *supra* n 6, at 39: “Quite often, freight forwarders undertake, pursuant to their trading conditions, to maintain a claim against the carrier and, if negligent in doing so, can be sued by the shipper or owner of the goods for recovery... .”

²⁶ Article VIII of the Montreal Protocol No 4 amends the original text of Article 24 of the Warsaw Convention (*supra* n 16) by extending the reference to passengers’ claims being governed by the Convention “without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights” to cover cargo and baggage claims as well. The Protocol, which came into force generally in 1998, did not apply to the air carriage in *Western Digital*. In New Zealand, the Protocol governs air carriage only between those countries which have acceded to it: see the Civil Aviation Act 1991, section 91Q. To date this covers just over 40 countries, including Australia, the UK and the USA. Article 29 of the Montreal Convention (*supra* n 1), which is not yet in force, is in similar terms to Article VIII of the Protocol.

In more general terms, the continuing debate over title to sue under the Warsaw Convention provides an interesting illustration of the tensions surrounding the interpretation and implementation of international treaties by domestic courts, and of the discrepancy which often exists between the rosy rhetoric of uniform international law and the rather more limited, inconsistent and uneven results that are actually achieved at the domestic level.²⁷ It also underscores the importance of including an appropriate review and amendment procedure in treaties, to ensure that they are kept up to date with economic and technological changes and developments in trade practices;²⁸ not least because a failure to do so renders an outdated text vulnerable to hostile construction by an unsympathetic domestic court.

²⁷ On this theme, see eg RH Mankiewicz "The Judicial Diversification of Uniform Private Law Conventions: The Warsaw Convention's Days in Court" (1972) 21 ICLQ 718.

²⁸ See M Evans "Uniform Law: A Bridge too Far?" (1995) Tulane J International & Comparative L 145 at 152-153, who notes in this regard that "the Warsaw System exposes one of the principal weaknesses of uniform law - the inability of the international community to respond to changing circumstances by adopting and implementing updated versions of existing instruments in a timely fashion". Article 24 of the Montreal Convention (supra n 1), which attempts to future-proof air carriage claims against inflation by providing for regular reviews of the limitation of liability provisions in Articles 21-23, represents a positive step in the right direction, but arguably does not go far enough.