



Civil Aviation Act 1949

1949 CHAPTER 67 12 13 and 14 Geo 6

PART IV

LIABILITY FOR DAMAGE, ETC., CAUSED BY AIRCRAFT

42 Limitation of liability

- (1) Subject to the provisions of this Part of this Act, where a person or his estate is liable to pay damages by reason of loss or damage which, after the appointed day, is caused on any one occasion to persons or property on land or water by, or by a person in, or an article or person falling from, an aircraft while in flight, taking off or landing, his or, as the case may be, his estate's total liability to pay damages by reason of the loss or damage shall be limited in accordance with the provisions of the Fifth Schedule to this Act;

Provided that a person or, as the case may be, his estate shall not be entitled to the benefit of this section in relation to any such loss or damage as aforesaid in any case in which it is proved that the loss or damage is attributable to his wilful misconduct or to wilful misconduct on the part of any of his servants or agents, unless (in a case where the loss or damage is attributable to wilful misconduct on the part of any of his servants or agents) it is proved that the loss or damage occurred without his actual fault or privity.

- (2) Any reference in this Act to the total limit of liability appropriate to an aircraft shall be construed as a reference to the total amount to which a person could, in the circumstances mentioned in the foregoing subsection, limit his liability to pay damages in respect of loss or damage caused on any one occasion by that aircraft, whether to persons or to property; and any reference in this Act to the limit of liability for property claims appropriate to an aircraft shall be construed as a reference to the amount to which a person could, in such circumstances, limit his liability to pay damages in respect of loss or damage caused on any one occasion by that aircraft, if that loss or damage were only loss of, or damage to, property.
- (3) Without prejudice to the operation of the next following section, a person or, as the case may be, his estate shall not be entitled to the benefit of this section in relation

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to any loss or damage, if, at the time of the happening of the event which was the cause of the loss or damage, he was not the owner of the aircraft concerned and was in, or in possession or control of, the aircraft without the authority or permission of the owner thereof.

- (4) Where any person or the estate of any person is alleged to be under any liability in respect of such loss or damage as is mentioned in subsection (1) of this section, and several claims for damages are made or apprehended in respect of that liability, the said person or his personal representative, as the case may be, may make application to the High Court, and thereupon the court may assess the liability to pay damages, and determine whether, and, if so, to what amount, it can be limited under this section, dealing separately, if need be, with such of the claims as are in respect of loss of or damage to property, and, if the liability can be so limited, may distribute the amount thereof among the several claims on the following principles:—
- (a) if the claims are solely in respect of loss of life or personal injury or solely in respect of loss of, or damage to, property, the amount of the liability shall be distributed rateably;
 - (b) if there are claims both in respect of loss of life or personal injury and in respect of loss of, or damage to, property, one-half of the total limit of liability appropriate to the aircraft concerned shall be appropriated, so far as necessary, to meeting claims for loss of life or personal injury and shall be distributed rateably among them, and the other half shall be distributed rateably among all the claims, including claims in respect of loss of life or personal injury if and so far as they exceed the aforesaid appropriation.
- (5) Where an application is made to the court under the last foregoing subsection, the court may stay any proceedings pending in any other court in relation to the same matter, and may give such directions as the court thinks proper for the joining of persons interested as parties to the proceedings, for the exclusion of claims which are not brought before the court within a certain time, and for requiring security from the person by whom the application to the court was made.
- (6) Nothing in this or the last but one foregoing section shall affect the operation of the Carriage by Air Act, 1932, or any contract for the carriage of passengers or goods by air in so far as the contract provides for determining or limiting the liability of the carrier thereunder.