



XIV

Welcome to **WALA XIV**
Manama, Bahrain
May 29-31, 2024

DHI22 v Qatar Q.C.S.C (NO 2) [2024] FCA 348

Case note

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May 2024

HOSTED BY:



Overview

Overview of Presentation

1. Summary of facts; parties involved
2. The legal issues
3. Claims against Qatar Airlines dismissed
4. Claims against Qatar CCA dismissed
5. Claims against MATAR
6. Next steps

Summary of Facts

Parties:

The parties to this proceeding were as follows:

(a) Five applicants (remain unnamed pursuant to s37A of the *Federal Court of Australia Act 1976 (Cth)* ('FCA Act'))

And

(a) Qatar Airways Group Q.C.S.C (First Respondent) ('**Qatar Airways**')

(b) Qatar Civil Aviation Authority (Second Respondent) ('**Qatar CAA**')

(c) Qatar Company For Airports Operation and Management (Third Respondent) ('**MATAR**')

Facts:

1. In October 2020, applicants were subject to invasive examinations, allegedly prompted by the discovery of a newborn baby in a rubbish bin within a terminal toilet cubicle at Doha Airport.
2. Invasive examinations took place at the tarmac of the Airport.
3. 30 September 2022, Applicants initiated legal proceedings against respondents alleging negligence, assault, battery and false imprisonment.
4. Applicants bought claim against Qatar Airways and MATAR asserting negligence under the Montreal Convention and Australian law, as well as intentional tort.

Court's Decision

1. Judgment ruled in favour of Qatar Airways, pending determination of appeal application filed by the applicants.
2. Surviving claims against MATAR remains.

Summary of Claims

Claim	Claim Against	Details	Court's View
Article 17 of Montreal Convention – Negligence	Qatar Airways	Applicants contested the three-pronged legal test for determining incidents during embarking and/or disembarking; and whether the incident occurred within the scope of liability for Qatar Airways under the Montreal Convention.	Claim dismissed as the examination was not deemed part of embarking or disembarking operations. Three-pronged test accepted.
Exclusivity Principle under Montreal Convention	Applicants	Qatar Airways argued negligence claims can't be upheld due to the exclusivity principle.	Upheld, as negligence claims outside Montreal Convention under domestic law undermine its purpose.
Negligence – Duty of Care	Qatar Airways	Applicants alleged duty of care owed by Qatar Airways to minimize harm on the tarmac that led to invasive examinations.	Dismissed due to lack of specific factual allegations supporting duty of care.
Negligence – Duty of Care	MATAR	Applicants alleged duty of care owed by MATAR to minimize harm (same as above).	Amended pleadings granted, but current framing lacks specificity in linking MATAR to actions of MOI police officers and the nurse who conducted the examinations.
Intentional Tort Claims	MATAR	Applicants alleges assault and false imprisonment against individual perceived as agents of MATAR.	Amended pleadings granted, but requires applicants to clearly define MATAR's liability and exclude impermissible claims.

Claims against Qatar Airlines dismissed

Summary of Applicant's claims

Article 17

Three applicants sought damages from Qatar Airways under the Montreal Convention, along with batter claims against QCAA and MATAR. Liability under Art 17(1) establishes liability for passenger death or injury during aircraft operations, including embarking and disembarking.

Jurisdiction

Applicants, being passengers on a flight destined for Sydney NSW, had the right to file their claim under Australian law.

Article 29

Exclusivity principal relied by Qatar Airways, which limits liability claims to those outlined in the Convention.

Court's Consideration:

1. Justice Halley applied a three-pronged test to determine whether an accident occurred during embarkation or disembarkation, as per *Kotsambasis v Singapore Airlines*. Held that invasive medical examination conducted by a nurse in an ambulance on the tarmac did not meet the criteria within Art 17 liability.
2. Held that Art17 provides sole means of establishing a carrier's civil liability for passenger's personal injury during international air travel and precludes tort or negligence claims under domestic law.

Claims against Qatar CCA dismissed

Sovereign Immunity

Qatar CAA sought a stay of applications against it based on sovereign immunity and s 38 of the Foreign States Immunities Act 1985 (Cth).

Court's Consideration:

1. Justice Halley agreed that Qatar CAA was immune from court's jurisdiction under s 38 of the FSI Act
2. Held that Qatar CAA was exercising 'inherently governmental or sovereign functions of the State of Qatar'.
3. The applicants' argument to invoke the commercial transaction exception to foreign state immunity was dismissed.

Claims against MATAR

Summary of Applicant's Claims:

Negligence – breach of duty

Applicants argued that MATAR, as contracted manager and operator of Doha Airport owed them a duty of care to prevent harm to passengers while on the Airport Premises.

- Alleged breach included directing passengers without proper justification to invasive examinations
- Failure to provide adequate explanations or prevent actions

Intentional Tort Claims

Allegations against MATAR based on actions of individuals perceived as its agents or employees.

- Including confinement during movement, and inside ambulances.

Court's Consideration:

1. MATAR's duty to minimize harm on airport premises is present, but does not extend to interfering with government operations or law enforcement agencies.
2. Lack of specific factual allegations to support vicarious liability claim against MATAR for actions for police officers and nurses.

Surviving claims against MATAR:

1. the applicants can proceed to bring a negligence claim against MATAR, pleaded as participation and facilitation of tortious conduct. This includes allegations that MATAR's employees or contracted security personnel were involved in giving directions to the applicants in a manner that contributed to the invasive examinations; and
2. the applicants can claim that MATAR is variously liable for the actions of its employees who directed the applicants before, during, and after the invasive examinations. This encompasses specific allegations against identified MATAR employees or agents, as detailed in the proposed pleadings.

Summary of Remaining claims

Granted Leave – Amended Pleadings

Granted leave to the applicants to file a revised Amended Pleadings limited to claims against MATAR that can be advanced.

Appeal – 24 April 2024

Applicants have filed an appeal on this FC judgement.

Case Management Hearing – 10 May 2024

Surviving claims against MATAR are stayed until determination of appeal.

Key Takeaways

Scope of Duty of Care for Airport Operators

- Airport operators owe a duty of care to passengers
- Not liable for actions outside their control such as government operated security procedures

Interpretation of Montreal Convention

- Narrowly construed, limiting liability to incidents occurring on board aircraft or during disembarking and embarking.
- Claims outside scope of Montreal Convention cannot be pursued under domestic law, reinforcing the Convention's primacy in aviation liability.

Ongoing legal proceedings

- Substantive hearing has not been yet heard
- Applicants filed an appeal against FC's judgement, indicating ongoing legal disputes related to this case.



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Thank you!

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