

Civil Liability of The Air Carrier for Errors of The Aircraft Crew in Jordanian Law

Abed Alhameed Yousef Mohammad Al-Adwan, Abdulwahab Abdullah Al-Maamari *

Department of Private Law, Isra University, Queen Alia International Airport Road, Amman 11710, Jordan;
abdulhameedaladwan@yahoo.com (A.Y.M.A)

* Correspondence: almamary380@gmail.com (A.A.A.); Tel.: +962779116272

Abstract: The aircraft crew bears significant responsibility as they operate the aircraft in the sky, carrying numerous duties and exercising various authorities to perform their tasks effectively. The aircraft crew is obligated to fulfill their commitments towards the air carrier. Current study addresses the issues surrounding the extent of the air carrier's liability for errors committed by the aircraft crew. These errors may be personal, technical, or administrative during flight. We used a comparative, descriptive, and analytical approach to achieve the objectives of the thesis and answer its questions, which focus on defining the obligations and authorities of the aircraft crew and determining the nature of the air carrier's responsibility for errors of the aircraft crew. The key finding of study is that the Jordanian legislator has largely held the air carrier responsible for damages resulting from errors committed by the aircraft crew. Both the air carrier and the aircraft crew share responsibility for these damages towards third parties based on solidarity and mutual assistance. It is suggested to amend the text of Article (42/C) to include detailed provisions specifying the extent of responsibility for each member of the aircraft crew, the responsibility of the aircraft commander, operator, and air carrier in the face of actions leading to harm.

Keywords: civil liability; aircraft crew; air carrier, Jordan law; damages, Warsa convention

1. Introduction

Air transport is characterized by an international nature, due to the high speed of aircraft crossing political borders between countries. Due to this high speed, air transport has become a primary means upon which economic activities rely in the modern era. Its importance has also increased in the transportation of goods and passengers, as aviation principles of safety and security now prevail. It is inconceivable that airplanes could be allowed to fly, navigate through the air, or land and take off without following the directives provided by governments. These guidelines cover a wide range of topics related to air travel, including the specifics of airline tickets and what passengers and shippers need to know. In order to guarantee national security, the preservation of lives and property, and eligibility requirements for the aircraft, its pilot, and its regulations, laws are also required.

The aircraft crew assumes numerous responsibilities, with the aircraft captain being the primary authority regarding operation and safety. The captain must maintain order on board during flights. He is required to take certain measures or perform specific tasks on behalf of the aircraft owner related to air transport activities. National laws usually grant the aircraft crew, including the captain, extensive powers to control various tasks. The question of the air carrier's liability for the mistakes made by the flight crew which can range from individual mishaps to technological and administrative errors comes up. Thus, the study's issue may be traced back to the suitability of the legal documents governing the clauses pertaining to the air carrier's liability for the errors of the aircraft crew. According to Jordanian law, the flight crew and the aircraft operator share joint and several culpabilities for their obligations. This study will answer that how much of the aircraft crew's damages can the air carrier be held accountable for.

This study is significant theoretically as it delves into one of the most critical topics in air transport, which is the responsibility of the air carrier for the mistakes of the aircraft crew. Given the continuous movements of aircraft and the presence of a captain on each plane, the study emphasizes the importance of the theoretical aspect by shedding light on the responsibility arising from the errors of the aircraft crew. In a practical aspect, this study addresses the field of air transport and the responsibility arising from the mistakes of the aircraft crew. The continuous and increasing movements of aircraft increase the likelihood of errors and potential damages.

This study was designed to identify the obligations of the air carrier related to the mistakes of the aircraft crew, specify the legal basis for the air carrier's responsibility for the errors of individual

Citation: Abed Alhameed Yousef Mohammad Al-Adwan, Abdulwahab Abdullah Al-Maamari. 2023. Civil Liability of The Air Carrier for Errors of The Aircraft Crew in Jordanian Law. *Legal Research & Analysis*. 2, 1-8.

<https://doi.org/10.69971/s8xfrt59>



Copyright: © 2024 by the authors. This article is licensed under a Creative Commons Attribution 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by/4.0>.

members of the aircraft crew and clarify the limits of the air carrier's responsibility concerning the mistakes of the aircraft crew and the associated compensation provisions.

2. Methods

Given the nature of the study, the researchers adopted a descriptive-analytical methodology by collecting information and facts about the subject from original and documented sources. They followed the process of describing and analyzing legal texts in a scientific and legal manner to reach logical interpretations that enable them to frame the research problem. The researchers also employed a comparative methodology by comparing the texts of Jordanian law with international agreements that the Hashemite Kingdom of Jordan has acceded to regarding air transport.

3. Results and Discussions

3.1. Legal Provisions for the Air Carrier's Responsibility

The Jordanian legislator imposes civil liability on fault. The fault constitutes a breach in liability, and whoever commits the fault is obligated to compensate for the damage caused. The compensation and settlement of damages have evolved with the development and diversity of societies, leading to the emergence of various forms of compensation and restitution to rectify the harm suffered (Al-Dalouli 2014). Civil liability for personal actions is attributed to the individual who commits them. The act that results in harm, whether it involves direct intervention in causing the damage without the mediation of any other party, or through intervention with something distinct, holds the individual responsible for their actions that cause harm to others. As for actions performed by others or those falling under their supervision, the Jordanian legislator has defined their various aspects and included them in Articles (256-287) of the Jordanian Civil Law (Mansour 2015).

Beginning with this assumption, we elucidated the nature of the culpability resulting from the flight crew's errors, including damages, direct and indirect harm, causal links, and the attributes of this liability. In light of these obligations, the researchers also clarify the ways of responsibility. Majority of judicial systems have embraced the antiquated idea of errors. There is no single accepted definition of harm in legal jurisprudence, although it is a key component of criminal and civil liability. The legal doctrine has not articulated a term that includes all types of errors, and there is no agreement on a precise definition of error. Certain legal scholars, who define it as a "defect in a person's behavior accompanied by awareness of this defect" (Sultan 1970), have offered a normative definition of error. According to this viewpoint, there are two types of error: a moral component that shows itself as awareness and a tangible component that is realized through trespass or deviation (Al-Hakim 2010). Another viewpoint about error within the scope of civil liability is the "debtor's failure to fulfill an obligation or the failure to achieve the result agreed upon and the failure to exercise due care in fulfilling the obligation" (Abu Al-Saud 1984). Regardless of the differences in opinion regarding the definition of error, it remains an activity that results in adding harm and injury to others. In the context of our study, error serves as a catalyst for invoking civil liability in the responsibility of the air carrier for the errors of the aircraft crew. Therefore, in this section, we delve into the nature and characteristics of this liability.

3.2. Direct Harm or Causation and its Relationship with the Liability of the Air Carrier

The aircraft crew liability is often personal. The aircraft captain commands the aircraft away from any supervision, being the decision-maker facing crises affecting the aircraft. This responsibility is based on their experience and studies in aviation. The legal system tends to attribute direct responsibility to the aircraft captain, especially as most of incidents occur due to errors by the captain (Ammar 2022)¹. Consequently, the researchers believe that most errors occurring from the aircraft captain, being the most crucial member of the aircraft crew, place the greatest burden of responsibility on them for any resulting harm.

Article 256 of the Jordanian Civil Law suggests the direction in which the legislator worked and built his theory, grounding it on cause and harm without necessarily requiring the occurrence of an error. The article stipulates, "every harm to others obliges its doer, even if not distinguished, to guarantee the damage." The legislator derived this principle from Islamic jurisprudence, deviating from the Egyptian and French legislations and most other legislations. According to this principle, anyone causing harm to others is obligated to bear the consequences of his/her harmful actions and compensate those who suffer the damage. This theory is considered closer to justice (Mansour 2015). This provision clarifies the causal relationship that must exist between the damages and the harm resulting from them. It does not question the guarantee when the actor's action does not lead to damages. If the damage results from an external cause, it is not subject to the guarantee, as the actor is not responsible for it. Therefore, it is necessary for the harmed party to establish the causal relationship between the damage incurred and the action that caused it (Mansour 2015).

According to Jordanian law, anyone who suffers injury while on the ground, inside an aircraft, or as a result of an aircraft operating within its own airspace is entitled to compensation under the terms of this law and any applicable international treaties (Article 55 of the Civil Aviation Law). In the absence of a specific provision in this legislation or in international treaties, general laws regarding civil liability for repair apply (Jordanian Civil Aviation Law, 2011)². Article 257 of the Jordanian Civil Law states that harm can be direct or consequential. If it is direct, guarantee is mandatory without any conditions. If it occurs as a consequence, it requires trespass or intentionality, or that the act leads to harm." Therefore, there is no guarantee except through these two methods. The direct harm and consequential harm are explained below to clarify the responsibility of the aircraft crew as a result.

¹ Ammar, Abdulaziz Hussein. 2022. Responsibility of the Civil Aircraft Commander - Civil and Criminal. Available online: <https://www.carc.gov.jo/sites/default/files/2022-05/civil-aviation-charges-by-law1.pdf> (accessed on 13 July 2024).

² Civil Aviation Law of Jordan No. (41), 2007, published in the Official Gazette No. (4828), page (3735) on (31/5/2007). Available online: <https://www.carc.gov.jo/en/civil-aviation-law-41-year-2007-0> (accessed on 13 July 2024).

3.2.1. Direct Harm

Jurists have provided various definitions for direct harm, most of which focus on demonstrating the causal relationship between the action and the damage. This means that if one's action directly leads to damage, they bear absolute liability for repair and compensation, whether the harm was intentional or unintentional, and whether it involved trespass or not (Al-Yaqoub 1978). This indicates that causing harm alone is an unjust act in direct harm, and it establishes liability with a guarantee. Harming others, whether to person or property, is sufficient to establish direct liability without the need for a condition. The causal relationship exists between the direct action and the resulting damages, necessitating the guarantee for repair and compensation from the one causing harm to the harmed party, as they are the sole cause of the damage (Al-Yaqoub 1978). Therefore, any direct actions by a member of the aircraft crew that cause harm would require compensation.

3.2.2. Consequential Harm

Article 184 of the Explanatory Memorandum of the Civil Law 1992 defines consequential harm as: "the occurrence of an effect in one thing leading to the destruction of another thing. If a rope holding a lamp is cut, and the lamp breaks, cutting the rope is considered direct, while breaking the lamp is considered consequential." As a result, the outcome of a person's activity that causes harm without the action itself producing harm is known as planned consequential harm. Only a certain amount of damage must be done for an act to be deemed illegal (Al-Sarhan 2016). According to Article 257 of the Civil Law, an act must be purposeful, intentional, or likely to cause damage in order for the person causing injury to be compensated.

Legally, trespass means that the perpetrator intended both the action and the harm. The intention should not be limited to the action alone, as it is not enough to intend the action without intending the consequences. There must be an intention to cause harm to others (Khasawnah 2000). The decision of the Court of Cassation states that (invasion) is the actual trespassing against the inviolable rights of others or exceeding the necessary limits, or the deficiency in reaching the required limit in action or refraining (Decision No. (2261)³ of 2019, Jordanian Court of Cassation, 5/20/2019.).

Referring to the decision of the Court of First Instance in its appellate capacity, the basis for establishing liability (responsibility) for harmful acts according to Article (256) of the Civil Law is based on three foundations: invasion (harm), damage, and the causal relationship. It is necessary to prove all these pillars for liability to compensation or guarantee based on the rules of compensation in liability for harmful acts and its foundations. The relied-upon pillar in establishing liability for guarantee is the pillar of invasion or harm. The conditions for the judgment of compensation are the proof of the occurrence of damage, attributing it to the actor, and the presence of the causal relationship between the act (invasion) and the damage (Decision No. (5494)⁴ of the year (2021) Amman Court 11/3/2021.). Therefore, in the event that the aircraft commander violates his authority and causes harm, as previously stated, he will be held liable for the injured party's losses.

3.3. Solidarity in the Liability for Aircraft Crew Errors and Compensation

Article 55 of the Civil Aviation Law states: "anyone who suffers damage while inside or outside the aircraft or on the surface of the earth, and the damage is due to the operation of the aircraft while in flight within the territory of the Kingdom or its airspace, is entitled to compensation under the provisions of this law and international treaties in effect in the Kingdom. General rules of civil liability for compensation apply if there is no provision in this law or in international treaties."

3.3.1. Solidarity in Liability for Aircraft Crew Errors

In contrast to contractual liability, where solidarity is only explicitly agreed to or required by law, civil culpability for negligence is a globally recognized and presumed concept. Article 42 of the Jordanian Civil Aviation Law, which holds each air carrier accountable for damages brought about by the flight crews and aircraft commander's mistakes, serves as proof of this. It indicates that the Jordanian legislator has established liability for compensation based on solidarity and mutual support, each of them is jointly and severally accountable with the aircraft operator. Stated differently, there is joint and multiple liability for the mistakes made by the crew, the aircraft commander, and themselves. Article 45 of the Montreal Convention (1999)⁵ on air carriage operations, in, allows the injured party to claim compensation against the actual carrier, either the contracting carrier or both jointly or separately. If the claim is filed against one of them, that carrier may request the involvement of the other in the lawsuit, subject to the procedures and consequences governed by the law of the court handling the case.

Aviation law and its conventions indicate that liability, whether contractual or due to negligence, is based on compensation. This applies to disputes between multiple air transport companies or between air transport companies and the aircraft crew or its commander. The principle of solidarity is regulated by the Jordanian legislator in accordance with the general rules of civil law, as stated in Article 265 as "If those responsible for the harmful act are multiple, each of them is responsible in proportion to their role, and the court has the right to adjudicate equally or in solidarity and mutual support among them." Jordanian legislator, according to the aforementioned article, has made solidarity between those responsible for the harmful act mandatory. The Court of Cassation has ruled, "If those responsible for the harmful act are multiple, each of them is responsible in proportion to their role, and the court has the right to adjudicate

³ Decision No. (2261) of the year (2019) issued by the Court of Cassation in its capacity as a civil court, dated 20/5/2019, Published on "Qararak" website, affiliated with the Jordanian Bar Association. Available online: <https://qarark.com/> (accessed on 13 July 2024).

⁴ Decision No. (5494) of the year (2021) issued by the Amman Court of First Instance in its appellate capacity, dated 3/11/2021, Published on "Qararak" website, affiliated with the Jordanian Bar Association. Available online: <https://qarark.com/> (accessed on 13 July 2024)

⁵ Montreal Convention .1999. Available online: <https://www.iata.org/en/programs/passenger/mc99/> (accessed on 13 July 2024).

equally or in solidarity or mutual support among them, in accordance with the provisions of Article 265 of the Jordanian Civil Law "(Decision No. (819)⁶ Jordanian Court of Cassation 12/31/1994).

In the case of the joint responsibility among those liable, the court determines the amount each of them should pay. The court relies on the severity of the error committed by each party and the degree to which this action contributed to the resulting damage. If the court finds it impossible to determine the share of each party, it may rule that they share responsibility equally⁷. Solidarity, in this context, means that each of the multiple parties responsible is individually liable to the victim to provide full compensation. The victim can choose to demand compensation from all of them collectively or select one of them. According to Article 426 of the Jordanian Civil Law, "solidarity and mutual assistance among civilians are only valid by agreement or legal provision. "Solidarity among those responsible for harmful actions requires that each of them commits an act that leads to the damage suffered by the victim. Each action performed by those responsible should contribute to causing harm to the injured party. If the action of one of the parties did not contribute to the occurrence of the damage, that party can't be held responsible for solidarity. It is also necessary that the damage caused by those responsible is a single harm, and an agreement between the parties on causing the damage is not a requirement (Al-Sarayreh and Al-Adwan 2020). We argue that the aircraft operator, its pilot, and crew members are jointly and integrally liable. According to the general principles explained, each of them is responsible for the actions that resulted in causing harm to the victim. The basis for restitution and compensation is determined by the court, identifying the party responsible for the damage and determining the extent of the harm resulting from the error.

In the event of an aviation accident, whether the aircraft owner is an operator, an air carrier, or a company, they are responsible for the errors of the aircraft crew. The affected individual can hold the aircraft operator accountable based on contractual or tort liability. They also have the option to directly hold the aircraft crew responsible for their personal error (Ammar 2022). However, the injured party must prove that the cause of the damage is the aircraft commander. If it is established that the aircraft commander is the cause of the damage due to his error, he is jointly and severally liable with the aircraft operator for compensating these damages.

The Jordanian legislator, in the provisions of Article (48) of the Civil Law, allows the injured party to receive compensation for the damage incurred, and the judgment of compensation relies on this text (Qweider 2017). Various methods of compensation exist according to the provisions of general rules, where Article (269) of the Jordanian Civil Law states: "It is valid for the guarantee to be installments or to be periodic, and in both cases, the debtor may be compelled to provide insurance as determined by the court. The guarantee can be assessed in cash, upon the court's permission - based on the circumstances and upon the request of the injured party - by ordering the restoration of the situation to what it was or by ordering a specific act connected to the harmful act, as a form of compensation." According to the text of this article, compensation can be in kind if feasible, or it can be in cash if in-kind compensation is not possible.

3.3.2. Material Compensation

Material compensation is the restoration of the situation to what it was before the occurrence of the damages. Material compensation fulfills the commitment in kind, and fulfilling this commitment is the foundation of contractual obligations. Material compensation can also be involved in non-contractual obligations, for example, if the debtor violates the commitment not to harm others (Al-Majali 2006). Article 195 of the explanatory memorandum for Article 269 of the Civil Law, states the possibility of this being material compensation by the court ordering the restoration of the situation, such as building a demolition wall or removing a constructed wall (Explanatory Memorandum of the Jordanian Civil Law)⁸.

3.3.3. Compensation in Equivalent

Restoring the situation to what it was before the damage occurred is often not feasible in the context of air travel-related damages. In such cases, the only recourse available to the court is to resort to compensation in equivalent. Compensation in equivalent can take the form of performing a specific action, known as non-monetary compensation, or providing a monetary amount, known as monetary compensation (Al-Qudah 2018). Monetary compensation is defined as compensation sought in cases of liability for negligence. In situations where the judge deems non-monetary compensation impractical, they may rule for monetary compensation. Monetary compensation is a sum of money that the wrongdoer is obligated to pay as compensation for the damages. It serves as a means to redress and repair the harm. Compensation in equivalent through monetary means facilitates the financial exchange and serves as a method for evaluating damages, regardless of their nature (Al-Majali 2006).

According to Article 269 of the Jordanian Civil Law, the judge can determine the method of payment as he deems appropriate. He may order a lump sum payment or in the form of specified installments, with a defined duration and a specified number. This compensation can be in the form of a regular payment for the rest of one's life or for a specific period of time, depending on the circumstances of the case and the claimant's request (Al-Sanhouri 2015). The compensation value will be determined according to the Article 266 of the Jordanian Civil Law that "compensation shall be determined in all cases in proportion to the damage suffered by the victim and the loss of profit incurred by the victim, provided that it is a natural result of the harmful event." The determination of compensation by the judiciary is carried out in accordance with the provisions of the law, and the judge may seek the assistance of experts or whoever he deems appropriate, based on his discretionary authority. The judge's assessment includes compensating for any material or moral damage resulting from the reasons that caused the harm.

⁶ Decision No. (819) issued by the Court of Cassation in its capacity as a civil court, dated 31/12/1994, published by 'Adalah' Publications, Jordan.

⁷ Explanatory Memorandum of the Jordanian Civil Law, Part One and Two, prepared by the Technical Office at the Jordanian Bar Association, 1985.

⁸ Explanatory Memorandum of the Jordanian Civil Law, Part One and Two, prepared by the Technical Office at the Jordanian Bar Association, 1985.

Article (58/A) of the Jordanian Civil Aviation Law states that "lawsuits for compensation arising from damage caused by the operation of an aircraft in a state of flight in the territory of the Kingdom or in its airspace fall within the jurisdiction of the court where the damage occurred within its territorial jurisdiction or the court where the defendant resides or has its principal place of business." According to paragraph (B) of the article, "Jordanian courts have jurisdiction to consider lawsuits for compensation for damage resulting from the operation of the aircraft while in flight over high seas or in areas not subject to the sovereignty of any state. This applies in the following situations:

- If the aircraft causing the damage is registered in the national registry.
- If the plaintiff holds Jordanian citizenship.
- If the defendant - the party causing the damage - is a resident in the Kingdom and has a domicile there."

Determining the nature of the liability of the aircraft crew allows us to envision ways to fulfill this responsibility. Payment methods vary depending on the nature of this liability. The liability of the aircraft crew may be based on the existence of potential risks in the work, and the payment of liability is determined by a legal text. Additionally, the liability of the aircraft crew is based on the concept of damage. The crew is required to exercise care in carrying out its commitment to transporting passengers and luggage. It is incumbent upon them to prove that the care they exercised does not fall below the standard expected in their personal affairs in such cases. Thus, reliance is placed on the aircraft crew, which performs the work, and in this case, the denial of the occurrence of damage is possible from its foundation (Ghatasha 2002).

Damage, in cases explicitly specified by the legislator, is not guaranteed for the harm resulting from the actor's actions. This is applicable when one of the reasons for liability exemption stipulated by the Jordanian legislator is present, such as the case of legal defense, the state of compulsion, the execution of a public employee of an order issued to him by his superior, or in the case of permission from the rightful owner or guardian, or legislative permission (Al-Jarrah 2016 a,b). Additionally, the Jordanian legislator has granted the aircraft commander, as one of the crew members, certain powers previously discussed by the researcher. The aircraft commander may resort to these powers to offset such liability, which we will explore in this section regarding the ways in which the aircraft commander can fulfill the liability arising in his face.

4. Liability Payment for the Error of the Injured Party in Accordance with the Law

The Jordanian legislator explicitly states the error of the injured party as a reason for the liability of the aircraft operator and crew in Article 55 of the Jordanian Civil Aviation Law. The article states: "the aircraft operator, his agents, employees, and affiliates shall be exempted from compensation for the damage referred to in this article if it is proven that the damage resulted from an error committed by the injured party or any of his employees, affiliates, agents, or those who participated in their negligence in causing the damage." The text of the article suggests that a member of the aircraft crew or the air carrier can assume liability arising from the injured party's own error if the damage is caused by the injured party.

4.1. Assuming Liability for the Injured Party's Error

The Warsaw Convention of 1929 expanded the scope of liability exemption by adding the injured party's error as a means to escape liability. The aircraft operator, pilot, or air carrier must prove that the act or conduct of the injured party is what led to the occurrence of the damage. Merely proving that the injured party committed a specific act is not sufficient; according to article 21 of the Warsaw Convention, the error must be the cause of the damage (Abader 1988). Article 21 states: "If the carrier proves that the damage was caused by or contributed to by the fault of the person claiming compensation, the court shall apply its own law to determine the carrier's liability, or to decide in whole or in part." Article 7 of the amended protocol to Article 21 of the Warsaw Convention (1929)⁹ stipulates: "in a case where the carrier proves that the fault of the claimant in a compensation lawsuit is what caused the damage or contributed to it, he is fully or partially exempt from liability against this person, to the extent of his contribution to causing the damage or contributing to it" (Qaid 2010).

The Guatemala Protocol (1971) established a rule that completely or partially exempts the carrier from liability for damages that may be incurred by the passenger if it is proven that the passenger's error is the cause of the damage or contributed to its occurrence (Al-Areini 2003). If the injured party brings a lawsuit on their own behalf, the competent judge examines whether the injured party's error is the sole cause of the damage. If so, the aircraft operator or the carrier is completely exempt from liability. However, if the judge finds that the injured party's error contributed to the damage, the aircraft operator or the air carrier may be partially exempt from liability to the extent of the injured party's contribution to causing the damage (Al-Faqi 2004).

We argue that a member of the aircraft crew may rely on the injured party's error as a reason to demand exemption from liability in facing the airline company (air carrier) or the competent court. The judge may rule to completely exempt them from liability or partially exempt them based on the error committed by the injured party and the resulting damage.

4.2. Bearing the Responsibility of the Aircraft Commander According to the Law

Article 45 of the Civil Aviation Law, the Jordanian legislator stipulates: "the operator of the aircraft, its commander, the members of its crew, and any passenger shall be exempt from any liability for actions and procedures specified in this article if these actions are taken appropriately and for the safety of the aircraft and its passengers, and for regulating the system and security on the aircraft. The aircraft commander may violate regulations, rules, instructions, air traffic rules, and permit conditions if faced with urgent emergency situations requiring immediate action to address emergency circumstances threatening the safety of the aircraft and its passengers. In

⁹ Warsaw Convention. 1929. Available online: <https://www.icao.int/Meetings/AirCargoDevelopmentForum-Togo/Documents/9740.pdf> (accessed on 13 July 2024).

such cases, the commander must immediately notify the authority and air traffic control and obtain a modified permit if the situation requires." Hence, a member of the aircraft crew may bear the responsibility against them if it is proven that they exercised the required care to achieve the purpose of their work, followed the correct aviation rules (Ammar 2022), and complied with achieving a specific result, which is the responsibility of the commitment executor (Al-Jubouri 2002).

Commitment to exercising care, pledged to perform a specific task to achieve an end not entirely subject to one's will, constitutes a commitment to exercising care. If the required effort is made to achieve a result, whether it is actually achieved or not, then the commitment to exercising care is fulfilled. In this case, the individual has exercised their care to achieve it (Al-Khawaldeh 2011). Therefore, if the aircraft commander has exercised care to prevent any errors and fulfill his commitment towards the air carrier and the airline company, he can rely on that to bear the responsibility arising in his confrontation.

4.3. Bearing Responsibility Due to Force Majeure and Taking Necessary Measures

If the air carrier breaches its commitment, its responsibility is established, and it is obliged to compensate unless evidence is presented to deny liability due to force majeure or to demonstrate that necessary measures were taken. These measures act as a barrier between the carrier and the imposition of responsibility. If the carrier's commitment to achieve a goal is dissolved, it can be absolved by proving that non-compliance is attributable to an external cause beyond its control. If care is exercised, it can be absolved by providing evidence that the care exercised was that of an ordinary person. In this context, methods of absolving responsibility due to force majeure or by taking necessary measures to ensure the safety of the flight are discussed below.

4.4. Bearing Responsibility Due to Force Majeure

Force majeure is a general reason for exemption from liability arising from errors. Air law conventions, such as the Warsaw Convention of 1929 and its amended Hague Protocol of 1955¹⁰, do not explicitly mention force majeure. Article 20 of the Warsaw Convention's last clause states, "it could not have been avoided," referring to the impossibility of taking necessary measures to prevent the damage. This impossibility constitutes force majeure and is a significant reason for exempting liability for any compensation obligation (Marqas 1985). Force majeure is defined as "any event or occurrence that cannot be foreseen or prevented and is independent of the will of the air carrier and its affiliates" (Ghanam 2011). Hence the conditions of force majeure are the occurrence of the event without the air carrier and its affiliates having a hand in it, it being unforeseen by the carrier and its affiliates, and the impossibility for the carrier or its affiliates to prevent it.

Article 55 of Civil Aviation Law states "the operator of the aircraft, its agents, employees, and affiliates are exempt from compensation for the mentioned damage in this article if it is proven that the damage resulted from force majeure or a cause beyond the control of the aircraft operator, its agents, employees, and affiliates, and that they have taken all necessary measures to avoid the damage, or it was impossible for them to take such measures." Force majeure takes various forms in the field of aviation, posing challenges to the aircraft captain, one of the key members of the flight crew, given the significant responsibility placed on them. This includes factors related to nature and other circumstances beyond their control.

Natural factors are important in incidents that acquire the force majeure status, and for natural factors to be considered force majeure, it is essential that they were unpredictable and not taken into consideration by the airline operator, aircraft operator, or its captain. The conditions for natural factors to qualify as force majeure include the impossibility of anticipating and a lack of awareness of these risks by any of the involved parties, despite reasonable care and precautions. An example of natural factors as force majeure is the presence of a hurricane that the airline or the weather monitoring authorities could not detect or predict. In such cases, it becomes impossible to foresee the event, and it is not enough for it to be unforeseeable; it must be impossible to prevent. The responsibility is alleviated if the aircraft captain takes all necessary measures to prevent the occurrence (Al-Faqi 2004). For natural factors to be deemed impossible to foresee, they must be both unpredictable and beyond the reasonable control and actions of the aircraft operator, its crew, and the captain when they occur (Bahnasawi 1998). The researchers believe that the airline operator and the aircraft crew are obligated to prove the force majeure, demonstrating that it was the cause of the damage and providing evidence of the measures taken to prevent the occurrence of harm. If they fail to prove this, the responsibility remains with the aircraft captain.

4.5. Bearing responsibility by taking necessary measures

The aircraft operator or its captain may define what constitutes required precautions without having to provide proof of a force majeure to avoid liability. Rather, they have to demonstrate that they have followed all appropriate protocols and precautions to avoid injury. Even with these precautions in place, harm might still happen. This is the viewpoint that the wider view adopts, this is consistent with the rules of Jordanian civil law, which adopts damage as a basis for civil liability. Conversely, the more limited perspective demands that proof of force majeure or an outside source be provided to absolve the party from obligation for the harm. (Imran 1980)

Common causes of accidents in the aviation world include sudden engine failure or any malfunction affecting parts of the aircraft, leading to a sudden fall from the sky. Such incidents may result from an internal defect in the aircraft, shifting the responsibility away from the aircraft captain and back to the aircraft manufacturer or the party responsible for maintenance (Muwad 2000). Happening of such accidents does not exempt the airline or the maintenance supervisor from liability. For instance, the explosion of one of the aircraft's wheels or the failure of its engines implies negligence on the part of the airline regarding regular maintenance and technical inspection of the aircraft (Radwan 1990). In such cases, the aircraft captain can argue for the elimination of their responsibility in the face of the airline. The airline becomes liable for the damage incurred.

Article 20 of the Warsaw Convention of 1929, as amended by the Hague Protocol of 1955 absolves the airline from liability if it can prove that it has taken necessary measures to prevent harm. The article states, "the carrier shall not be liable if he proves that he

¹⁰ Hague Protocol. 1955. Available online: <https://www.govinfo.gov/content/pkg/CDOC-107tdoc14/html/CDOC-107tdoc14.htm> (accessed on 13 July 2024).

and his servants have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures. If an error is demonstrated to have not occurred¹¹, the defendant is released from liability by proving the corresponding efforts taken to prevent the error (Al-Sharqawi 1976).” Taking necessary measures and the absence of error as stipulated in Article 20 of the Warsaw Convention to prevent harm leads to the same meaning. It implies that the carrier and its crew, including the aircraft captain, have acted within their powers and obligations to fulfill the commitment to the safety of passengers, their belongings, and their timely transportation. The methods and measures were left up to legal interpretation and decision-making, as the convention did not describe them (Radwan 1994). The following are some of the precautions that the flight crew must take in order to avoid liability through reasonable care, the researchers recommend:

1. Ensuring the airworthiness of the aircraft and meeting all safety standards.
2. All crew members possessing the required certificates as per agreements and laws.
3. The aircraft being equipped with all necessary navigation devices.
4. Weather conditions allowing for takeoff.
5. Continuously following procedures and measures throughout the flight.

The researchers believe that if a member of the aircraft crew adheres to these measures and procedures as a necessity for the safety of the aircraft, avoiding harm, and exercises due care, they can absolve themselves of liability. If an airplane crew member violates the law or commits an error that puts them in a position to be held accountable, they may be held liable for their faults when confronting the air carrier. Liability may be transferred if the crew member takes the appropriate precautions to stay out of harm's way and complies with the guidelines to make up for any losses resulting from natural disasters. The requirements for liability that the air carrier can carry decide how much responsibility is paid in front of the party that feels wronged.

5. Conclusions

The air carrier is principally in charge of overseeing aircraft matters and choosing and designating the crew members in compliance with the legal authority and restrictions bestowed upon them. Every member of the flight crew is responsible for a multitude of tasks. Based on the idea of detrimental action, this study examined the nature of the flight crew's obligation. This obligation had certain qualities, like objectivity and shared blame among those accountable for the harm caused. The study also identified methods of transferring responsibility arising from the mistakes of the aircraft crew. Aircraft crew members are contractually bound to the air carrier through an employment contract. Therefore, any breach of their obligations towards the carrier constitutes contractual liability towards the air carrier and tort liability towards third parties. The air carrier is considered responsible for damages arising from the mistakes of the aircraft crew and cockpit crew members. Each of them is jointly and severally liable towards third parties. The Jordanian legislator, in accordance with the provisions of the Civil Aviation Law, explicitly states that any issue not addressed in this law is subject to international aviation agreements. Given the international nature of aviation liability, national laws cannot cover all its aspects. Aircraft crew members have the option to avoid liability by invoking legal provisions explicitly stated in the Civil Aviation Law, such as force majeure or necessary measures. They can also avoid liability if the injured party is the cause of the damage, as specified by law. Based on results, it is recommended that Jordanian legislator should amend the text of Article (42/j), clarifying detailed provisions that illustrate the extent of the responsibility of each member of the aircraft crew, including the responsibility of the aircraft commander, operator, and the air carrier in the face of actions causing damage. Similarly, the Jordanian Civil Aviation Law should explicitly state methods for determining the compensation value for damages arising from the liability of the air carrier. Civil Aviation Law should expressly mandate private insurance for each member of the aircraft crew, particularly the aircraft commander, due to the responsibilities placed on their shoulders.

References

- Abader, Rafat Fakhri. 1988. *Concise in Aviation Law*. Dar Al-Nahda Al-Arabia, Cairo: Egypt. <https://darnahda.com/>
- Abu Al-Saud, Ramadan Mohammed. 1984. *Principles of Commitment in Egyptian and Lebanese Law*. Dar Al-Jamia Beirut, Lebanon.
- Al- Areini, Mohammed Fareed. 2003. *Aviation Law, Domestic and International Air Transport*. Dar Al-Jamia Al-Jadeeda for Publishing, Alexandria: Egypt.
- Al-Sarayreh, Ibrahim and Al-Adwan Ashraf. 2020. Harmful act between solidarity, mutual support, and equality in Jordanian Law. *Jordanian Journal of Law and Political Science* 12:1-7.
- Al-Dalouli, Parviz khan. 2014. *The General Theory of Civil Protection*. 1st Ed. Al-Halabi Legal Publications, Beirut: Lebanon.
- Al-Jarrah, Jihad Muhammad Mohammed. 2016a. Harm by Causation in Jordanian Civil Law: A Comparative Study with the Provisions of Islamic Jurisprudence. *Journal of International Islamic Sciences* 3:11-21
- Al-Jarrah, Jihad Mohammed Mohammed. 2016b. Compensation for Causation in Jordanian Civil Law: A Comparative Study with Islamic Jurisprudence. *Al-Mizan Journal of Islamic and Legal Studies* 3:11-26.
- Al-Faqi, Mohammed Atef. 2004. *The Development of Carrier Liability According to the Montreal Convention – 1999*. Dar Al-Fikr Al-Jami'i, Cairo: Egypt.
- Al-Hakim, Abdel Majeed. 2010. *Concise in Commitment Theory in Civil Law - Sources of Commitment*. Dar Al-Atak, Cairo: Egypt.
- Al-Jubouri, Yassin Mohammed. 2002. *The Expounded in Explaining Civil Law - Sources of Personal Rights, Contract Theory, Contract Effects, and Termination*. Dar Wael for Printing and Publishing, Amman: Jordan.
- Al-Khawaldeh, Ahmed Mufleh. 2011. *Exemption Clause in Contractual Liability: A Comparative Study*. Dar Al-Thaqafah for Publishing and Distribution, Qatar. <https://darulthaqafah.com/>.

¹¹ Jordanian Civil Law No. (43) of the year (1976), published in the Official Gazette No. (2645), page (2) on 1/8/1976. Available online in Arabic at: http://www.lob.gov.jo/ui/laws/search_no.jsp?no=43&year=1976 (accessed on 13 July 2024).

- Al-Majali, Nizam Tawfiq. 2006. *The Scope of Prosecution for Personal Right Before the Criminal Court*. Dar Al-Thaqafah for Publishing and Distribution, Qatar. <https://darulthaqafah.com/>.
- Al-Qudah, Mufleh Awad. 2018. *Civil Litigation Principles*. 1st Ed. Dar Al-Thaqafah for Publishing and Distribution, Qatar. <https://darulthaqafah.com/>.
- Al-Sanhouri, Abdel Razeq Ahmed. 2015. *The Intermediary in Explaining the New Civil Law, Sources of Obligation*. Aleppo Legal Publications, Beirut: Lebanon.
- Al-Sarhan, Adnan Ibrahim, Khatir Nouri Hamad. 2016. *Explanation of Civil Law - Sources of Personal Rights, Obligations*. 1st Ed. Dar Al-Thaqafah for Publishing and Distribution, Qatar. <https://darulthaqafah.com/>.
- Al-Sharqawi, Jameel. 1976. *Proof in Civil Materials*, Dar Al-Nahda Al-Arabia, Cairo: Egypt.
- Al-Yaqoub, Badr Jassem Mohammed. 1978. Defining the Concept of Direct Damage According to Article (19) Repeated from the Kuwaiti Law on the Regulation of Liabilities Arising from Unlawful Acts. *Kuwait Journal of Rights and Sharia* 2: 285-329.
- Bahnasawi, Safwat Nagi. 1998. *Commitment to Delivering Goods in International Sales Contracts*. Dar Al-Nahda Al-Arabia, Cairo: Egypt.
- Ghanam, Sharif. 2011. *Civil Aviation Law*. Matla'at Al-Fujairah Al-Wataniya, Fujairah: UAE.
- Ghatasha, Ahmed Abdulatif. 2002. *Civil Aviation, General Provisions and Transport*. 1st Ed. Dar Safaa for Publishing and Distribution, Amman: Jordan.
- Imran, Mohammed Ali. 1980. *Commitment to Safety Guarantee: A Jurisprudential Study*. Dar Al-Nahda Al-Arabia, Cairo: Egypt.
- Khasawnah, Maha Youssef. 2000. *The Direct Act and Unlawful Causation of Harm in Jordanian Civil Law, a comparative study*. Master's thesis, Al al-Bayt University, Jordan.
- Mansour, Amjad Mahmoud. 2015. *The General Theory of Obligations - Sources of Obligation*. Dar Al-Thaqafah for Publishing and Distribution, Qatar.
- Marqas, Suleiman. 1985. *Civil Liability in Arab Countries Technologies*. Dar Ibn Al-Atheer, Cairo: Egypt.
- Muwad, Nadia Mohammed. 2000. *Aircraft Manufacturer Liability*. 2nd Ed. Dar Al-Nahda Al-Arabia, Cairo: Egypt.
- Qaid, Muhammad Bahjat Abdullah Amin. 2010. *A summary of Air Law "National and International Air Transport"*. Dar Al Nahda Al Arabiya, Cairo: Egypt.
- Qweider, Farqani. 2017. *Compensation for Damage Resulting from Violation of Right*. University Center Merseli Abdullah, Tipaza: Algeria.
- Radwan, Faez Naeem. 1990. *Commercial Aviation Law*. Commercial Statement Press, Dubai: UAE.
- Sultan, Anwar. 1970. *Sources of Obligation in Jordanian Civil Law*. Dar Al-Maaref, Alexandria: Egypt.