HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

RENAE EVANS
First Appellant

STEPHANIE EVANS
Second Appellant

and

AIR CANADA
ABN 29 094 769 561
Respondent

APPELLANTS' SUBMISSIONS

PART I: CERTIFICATION

1. These submissions are in a form suitable for publication on the internet.

PART II: CONCISE STATEMENT OF THE ISSUES

2. The following issues arise:
   (a) Whether Article 25 of the *Unification of Certain Laws of International Carriage by Air* 1999 ("the Montreal Convention")[1] allows an airline carrier to stipulate in a Tarriff that higher limits or no limits of liability apply to a claim for damages for bodily injury pursuant to Article 17 of the Montreal Convention.
   (b) Whether rule 105(c)(1)(a) of the Respondent's Tariff on its true construction constitutes a stipulation for the purposes of Article 25 of the Montreal Convention that displaces the application of Article 21(2) of the Montreal Convention.

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[1] *Montreal Convention for the Unification of Certain Rules for International Carriage by Air* (adopted 28 May 1999, entered into 4 November 2003) 2242 UNTS 309

(c) Whether rule 105(c)(1)(a) of the Respondent's Tariff operates to allow increased limits of liability or no limits of liability and thereby displaces the operation of Article 21(2) of the Montreal Convention to remove any limit on the primary liability of a carrier under Article 17(1) or otherwise operates as simply a consumer notification required by *Canadian Air Transportation Regulations*[2].

PART III: SECTION 78B OF THE *JUDICIARY ACT* 1903 (CTH)

3. The Appellants' consider that notice is not required under s78B of the *Judiciary Act 1903(Cth)*.

PART IV: JUDGMENT OF THE COURT BELOW

4. The reasons of the Primary Judge are unreported: *Evans v Air Canada* (2023) NSWSC 1535 (PJ): CAB 5-38. The reasons of the Court of Appeal (NSW) are unreported: *Air Canada v Evans* (2024) NSWCA 153 (CA): CAB 53-95.

PART V - NARRATIVE STATEMENT OF RELEVANT FACTS

Background

5. On 11 July 2019 the Appellants' were passengers onboard international flight ACO333 being a Boeing 777 ("the aircraft") operated by the Respondent. The aircraft departed Vancouver International Airport at approximately 07:50 enroute to Sydney, Australia. At approximately 14:00 the aircraft was approximately 640 nautical miles southwest of Honolulu, Hawaii when it encountered severe turbulence that caused the aircraft to suddenly drop ("the incident"): PJ [6] CAB 9-10.
6. Each Appellant alleges that she sustained personal injury by reason of the incident. The First Appellant alleges she sustained a discogenic injury to two levels of her cervical spine necessitating a disc replacement at C5/C6 and a fusion of C6-7, as well as psychological injuries. The Second Appellant alleges she sustained soft tissue injuries to the whole of the spine, as well as psychological injuries: PJ [6] CAB 9-10.
7. On 28 June 2021 the Appellants' commenced proceedings in the Supreme Court of New South Wales seeking damages pursuant to the provisions of the *Civil Aviation (Carriers Liability) Act 1959* (Cth) (referred to herein and in the PJ and CA as the "*Aviation Act*") and the Montreal Convention. The Montreal Convention has been

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[2] *Canadian Air Transportation Regulations SOR/88-58, reg 122*

given force of law in Australia by s9B of the *Aviation Act* and is recited in Schedule 1A thereto.

8. On 2 August 2021 the Respondent filed a Defence to the Statement of Claim admitting the application of the *Aviation Act* and the Montreal Convention to the claims brought by the Appellants. The Respondent pleaded that the limit on personal injury damages contained in Article 21 of the Montreal Convention applied to the claims.[3]

9. On 18 February 2022 the Appellants' filed a Reply, pleading that the limit on damages in Article 21 of the Montreal Convention did not apply on the basis that the Respondent's international Tariff general rules ("the Tariff") provided there would be no limits on compensatory damages in respect of bodily injury: PJ [9]: CAB 10.

10. On 14 September 2023 pursuant to rule 28.2 of the *Uniform Civil Procedure Rules* 2005 (NSW) two separate questions posed by the parties were heard by the primary Judge. The questions were:

    a) Does rule 105(c) [of the Tariff] provide and have the effect that if the Court assesses compensatory damages in Australian dollars in an amount in excess of 128,821 Special Drawing Rights (SDR), each is entitled to recover that sum from the defendant even if the defendant can prove that the damages were not due to the negligence or other wrongful act or omission of the carrier or its servants or agents or such damage was solely due to the negligence or other wrongful act or omission of a third party? The primary Judge answered in the affirmative: PJ [38] CAB 42.

    b) The second separate question was: Does Part 2 of the *Civil Liability Act* 2002 (NSW) apply to the determination of the quantum of any damages recoverable by the plaintiffs? The second separate question answered by the primary Judge is not relevant for the purposes of this appeal. It was not the subject of challenge in the New South Wales Court of Appeal.

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[3] Article 21(2) limits damages if the Airline can establish the damage was not due to negligence or wrongful act or omission on their part or where the damage was solely due to the negligence or wrongful act or omission of a third party. The limit was originally 100,000 Special Drawing Rights (equivalent to AUD $197,500.00). As at 28 December 2019 the revised limit was 128,821 Special Drawing Rights (equivalent to approximately $254,000.00).

11. On 21 June 2024 the New South Wales Court of Appeal granted leave to appeal and allowed the appeal setting aside the primary Judge's answer to question 1 and in lieu thereof answered the question in the negative: CA [93] CAB 94.

12. On 10 October 2024 special leave was granted to the Appellants' to appeal to this Court from the whole of the judgment and order of the Court of Appeal of New South Wales given and made on 21 June 2024: CAB 101.

The Montreal Convention

13. Air carrier liability for passenger injury, death or delay in baggage and cargo destruction, loss, damage or delay in international commercial air transportation is governed by several multilateral conventions, the first being the *Warsaw Convention* 1929[4], since amended by several protocols and ultimately eclipsed by the Montreal Convention. From its inception in the late 1920s, the overriding purpose of private international aviation law has been to create uniformity of law across jurisdictions, in which all disputes against air carriers and international travel involving passenger death, injury, or delay and baggage and cargo loss, damage or delay would be resolved uniformly no matter where the disputes arose.[5]

14. The Montreal Convention has been given force of law in Australia by s9B of the *Aviation Act* and is recited in Schedule 1A thereto.

15. The Montreal Convention commences with a recognition amongst other matters of the importance of ensuring the protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution.[6]

16. Under Article 17(1), when death or injury to a passenger occurs as a result of an accident onboard an aircraft, the carrier is liable on a strict, no-fault basis.

> *"Death and injury of passengers*
>
> *1. The carrier is liable for damages sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place onboard the aircraft or in the course of any of the operations of embarking or disembarking."*

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[4] Warsaw Convention for the unification of certain rules relating to international carriage by air (adopted 12 October 1929 entered into force on 13 February 1933 (137) LNTS 11 (Warsaw Convention 1929).
[5] *Reed v Wiser* 555 F2d 1079 (1977).
[6] Page 1 of the Montreal Convention.

17. Article 20 of the Montreal Convention provides that, if the carrier proves the claimed damage was caused or contributed to by the negligence or other wrongful act or omission of the plaintiff, the carrier is to be wholly or partly exonerated from its liability to the plaintiff to the extent the negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a person compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that he or she proves that damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. Article 20 applies to all the liability provisions in the Convention including paragraph 1 of Article 21.

18. Article 21 provides the carrier should not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger the applicable SDR amount if the carrier proves that:

    (a) Such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

    (b) Such damage was solely due to the negligence or other wrongful act or omission of a third party.

19. Article 24 of the Convention deals with the review of limits prescribed in Articles 21, 22 and 23 and requires that they be reviewed at five-year intervals. The Article commences by making it clear that the review of limits is without prejudice to the provisions of Article 25 of the Convention.

20. Article 25 provides that a carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention, or to no limits of liability whatsoever.

21. Article 26 provides that any provision tending to relieve the carrier of liability or to fix a lower limit than what is laid down in the Convention shall be null and void but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of the Convention.

22. Article 27 titled 'Freedom to Contract' provides that nothing contained in the Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under this Convention, or from laying down conditions which do not conflict with the provisions of the Convention.

The Tariff

23. It is common ground that Rules105(B)(5) and 105(C)(1)(a) of the Tariff formed part of the contract to carriage between the Appellants' and the Respondent.

24. The Tariff includes the following provisions:

> "*Rule 105 – liability of carriers*
>
> *B. Law and provisions applicable*
>
> *(5) For the purposes of international carriage governed by the Montreal Convention, the liability rules set out in the Montreal Convention are fully incorporated herein and shall supersede and prevail over any provision of this tariff which may be consistent with those rules.*
>
> *C. Limitation of liability*
>
> *(1) Where the Montreal Convention applies, the limits of liability are as follows:*
>
> *(a) There are no financial limits in respect of death or bodily injury."*

The Primary & Appeal Judgment

25. The primary Judge found that accepting the Montreal Convention formed part of the surrounding circumstances to which the parties would have had regard, that Article 25 allows a carrier to elect that its contract of carriage shall be subject to "*no limits of liability whatsoever*" and the words "*there are no financial limits in respect of death or bodily injury*" used in R105(C)(1)(a) should be given their natural and ordinary meaning in that context, namely as a choice by the parties to remove the liability limits pursuant to Article 25: CAB 22.

26. The Respondent appealed the primary Judge arguing that the primary Judge erred in its ruling that rule 105(C)(1)(a) of the Tariff, on its true construction, constitutes a stipulation for the purposes of Article 25 that displaces the application of Article 21(2) of the Montreal Convention.

27. The Court of Appeal allowed the appeal from the primary judge. The Court of Appeal accepted a submission that the "*core explanation*" for the presence of the limits of liability in rule 105(C)(1) was compliance with an obligation in Regulation 122(C)(xviii) of the Canadian Air Transport Regulations that the tariff contain a clear statement of the limits of liability to which the carriage was subject: CA [88] CAB 88.

28. The disparity between the approach taken by the primary Judge and the Court of Appeal to the construction question is wide. The primary Judge sought to follow

settled contractual principles and ascertain objectively the intention of the parties to the tariff by having regard to *Toll v Alphapharm*[7] including consideration of the reasonable person's understanding of the Tariff see: [PJ [35]-[36] CAB 12. The Court of Appeal, despite recognising the need to consider what a reasonable person would have understood the tariff to mean CA [24(2)] CAB 68:69 does not consider at any point what a reasonable person would understand by the language used in rule 105(C)(1)(a) and found that the '*core explanation*' for the presence of limits of liability in rule 105(C)(1)(a) was in compliance with the obligation in regulation 122(c) (xviii) of the Canadian Air Transport Regulations that the tariff contain a clear statement of the "*limits of liability*" to which the carriage was subject: CA [76] CAB: 88/89.

PART VI: ARGUMENT

The Montreal Convention

29. In *Macoun* v *Commissioner of Taxation* this Court identified the importance of having regard to the Vienna Convention on the Law of Treaties in interpreting conventions.[8] At 69-72 the Court stated:

> 69. The applicable principles of construction are not in dispute. The meaning of the Agencies Convention is to be construed according to the rules of construction in the Vienna Convention. Article 31(1) provides that a treaty must be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."
>
> 70. Article 31(2) of the Vienna Convention states:
>
> "The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
>
> (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
>
> (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty."

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[7] *Toll v Alphapharm* (2004) 219 CLR 164
[8] *Macoun* v *Commissioner of Taxation* [2015] 257 CLR 519

71. Article 31(3) provides that, together with the context, the following is also to be considered:

"(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties."

72. Finally, reference should be made to Article 32 of the Vienna Convention, which provides that recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31 or to determine the meaning when the interpretation according to Article 31 is ambiguous or obscure or leads to a result that is manifestly absurd or unreasonable.

30. The Court of Appeal at CA [7]; CAB 61 recognised that the Montreal Convention is to be "… *construed in accordance with the Vienna Convention under Law of Treaties 1969* …" which requires a treaty to be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.

31. The proper approach to statutory interpretation has been expressed in the following ways:

    a. "*[t]he construction…begins with the ordinary and grammatical sense of the words having regard to their correct and legislative purpose*"[9]

    b. "*…the context purpose and policy of the statutory provision may be the surest guide to construction*"[10]

    c. Words may be susceptible of a construction other than a literal construction when "*read in their context and with proper attention to the purposes of the statute as a whole*"[11];

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[9] See *Minister for Immigration and Citizenship* v *SZIGV* (2009) 238 CLR 642 at [5]
[10] *SZIGV* at [47] per Crennan and Kiefel JJ
[11] *SZIGV* at [20] per Hayne J

d. A construction of a section to avoid a result which would be "*irrational*" may properly encompass a departure from the literal or natural and ordinary meaning of the text[12]

e. As to the use of extrinsic materials, it is noted that it would be "*erroneous before exhausting the application of the ordinary rules of statutory construction*"[13]

32. It is against the well-settled principles of interpreting treaties and statutes that the operation of the relevant Articles in the Montreal Convention must be construed.

33. The Appellants' contend Article 25 clearly contemplates contractual provisions that raise or eliminate the liability limits stipulated in the Montreal Convention. In support of this contention the Appellants' submit:

a. Article 25 allows for the modification of limits of liability including those in Article 21(2), which must be the case since the limit on damages in Article 21(2) must be read as imposing a financial limit through the use of the words *"... shall not be liable for damages ..... to the extend they exceed for each passenger 100000 Special Drawing Rights."* thereby meaning it operates as a limit on the amount payable in damages.

b. The possibility pursuant to Article 25 to stipulate for "*higher*" limits of liability contemplates a higher amount, monetary or financial in nature, being stipulated in a tariff such as the threshold below which the claim cannot be answered by proving no fault. Such a higher limit might be in practical terms very high, so as to prevent a no fault answer to practically all cases. There is nothing discordant about a tariff stipulation taking the step of dispensing with any such threshold for Article 17(1) claims. That is clearly the removal of the limit imposed by the terms of Article 17(2).

c. Article 21(2) properly understood is a provision that sets a financial limit for damages that would otherwise be awarded under Article 17(1) if the carrier proves (in general terms) no fault.

d. The phrase in Article 21(2) of the Convention "*shall not be liable ... to the extent that they exceed*" is a natural way of imposing a "*limit*". Removing that limit below which a no-fault answer may avail against a claim is, on a natural reading,

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[12] *SZIGV* at [9] French CJ & Bell J applying *CIC Insurance v Bankstown Football Club* (1997) 187 CLR 355
[13] *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252 at [33-34].

a stipulation for no limits on liability within the meaning of Article 25 of the *Montreal Convention.*

e. Article 22(1) of the *Warsaw Convention* 1929[14] permitted a special agreement between the carrier and the passenger providing for a higher limit of the carrier's liability. Article 25 is in similar terms, has the same effect and likely originates from Article 22(1) of the Warsaw Convention.

f. Provisions that have the same effect as Article 25 exist for the international carriage of cargo by rail.[15]

g. Such provisions also exist for the international carriage of passengers and goods by sea (see: The Hamburg Convention[16] and Athens Convention 1974[17]).

h. Article 25 needs to be read in conjunction with Articles 26 and 27 of the Montreal Convention and when read so together it should be interpreted as a provision that allows contractual parties to deviate from liability limits prescribed by the Montreal Convention.

i. It is submitted the deviation can only be to the detriment of the carrier which is made clear in Article 25 from the use of the words "*higher limits of liability ... or to no limits of liability whatsoever*" and even clearer by the words in Article 21(1) "*shall not be able to exclude or limit its liability*".

j. Interpreting Article 25 in the manner propounded by the Appellants' is consistent with the recognition in the Convention of the importance of ensuring the protection or interests of consumers in international carriage by air and the need for equitable compensation based on the principles of restitution.

k. It is also consistent with the provisions in the conventions concerning international carriage by sea and rail, the freedom of parties to contract pursuant to Article 27 and Article 22(1) of the Warsaw Convention.

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[14] Warsaw Convention for the Unification of Certain Rules Relating to International carriage by Air (Adopted 12 October 1929, entered into force 13 February 1933

[15] Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM Uniform Rules), appendix B to the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980 as amended by the protocol of 3 June 1999 for the modification of the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980 See Article 5.

[16] United Nations Convention on the Carriage of Goods by Sea (adopted 30 March 1978 entered into force on 1 November 1992). See Article 22.

[17] Convention relating to the carriage of passengers and their luggage by sea (adopted 13 December 1974) entered into force 28 April 1987 (146) 3 UNTS 19 (*Athens Convention* 1974) with Article 10(1) providing that "*The carrier and the passenger may agree, expressly and in writing to high limits of liability than those prescribed in Articles 7 and 8.*"

l. Article 25 is not a provision that operates as a waiver of available defences under the Convention. It operates to allow parties to agree to an increase of liability or no limits. Article 21(2) is not a defence to actions pursuant to article 17(1); it is a provision that operates to limit the amount of damages, therefore falling squarely within the capacity under Article 25 to agree on higher limits or no limit.

m. Article 17(1) provides for strict liability. A true defence to the strict liability regime imposed by this Article does not exist in the Montreal Convention. What does exist is the ability for an aircraft to be exonerated to the extent of contributory negligence pursuant to Article 20 or to have their liability to pay damages exceeding the SPD amount pursuant to Article 21(2) limited to the SPD amount.

n. To find other than as the Appellants' contend would mean that Article 25 could have no operation to claims for compensation in cases of death or injury and could only apply to limits of liability in relation to delays, baggage and cargo. The text does not suggest such an odd result.

o. Article 24 provides that the limits of liability prescribed by Articles 21, 22 and 23 shall be reviewed every 5 years. This Article is expressed to operate without prejudice to Article 25. That accords with a scheme where parties may vary the limit by agreement.

The Tariff & Rule 105(C)(1)(a)

34. It is common ground that the tariff (as in force at 11 July 2019) forms part of the contract of carriage between the Appellants' and the Respondent.

35. The actual subjective intentions of parties to contracts are irrelevant to the construction of a clause thereof and should not be given weight in the interpretation exercise at the expense of the language of the contract.[18]

36. The context of transactions can assist the Court in affording a commercial contract an appropriately business like or commercial interpretation.[19]

37. The principles of objectivity by which the rights and liabilities of the parties to a contract are determined was reaffirmed in *Pacific Carriers Ltd v PNB Paribas*[20].

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[18] *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165; *Codelfa Construction Pty Ltd v State Rail Authority (NSW)* (1982) 149 CLR 337.
[19] *International Air Transport Association v Ansett Australia Holdings Ltd* (2008) 234 CLR 151.
[20] *Pacific Carriers v PNB Paribas* (2004) 218 CLR 451

38. It is against the well-settled principles of the construction and interpretation of contractual provisions that rule 105(C)(1)(a) needs to be construed.

39. It is submitted that the Court of Appeal erred in its finding that the that the '*core explanation*' for the presence of limits of liability in rule 105(C)(1)(a) was compliance with the obligation in reg 122(c) (xviii) of the Canadian Air Transport Regulations that the tariff contain a clear statement of the "*limits of liability*" to which the carriage was subject.

40. The primary Judge was correct in concluding that given the ordinary natural meaning of the words, rule 105(C)(1)(a) of the tariff removes the limit on the Respondent's liability as imposed by Article 21, in the manner permitted by Article 25.

41. The Primary Judge's approach should be preferred for several reasons:

    a. The language used in 105(C)(1)(a) there are no financial limits in respect of death or bodily injury is clear when constructed objectively.

    b. The use of the words "*no financial liability*" constitutes a clear and intended departure from other rules in the tariff that concern imposition of limits such as subrule 105(B) and subrules 105(C)(1)(b) and (c) and indeed 105(C)(2)(a).

    c. A contract is to be construed objectively and in accordance with its literal terms and relevant context.

    d. It properly recognises the Court's determination in requiring objective regard to the construction of the rule by considering the actual words used while taking into account the context of commercial purpose of the contract.

    e. The words in the rule are unambiguous and adopting a straightforward approach on reading and interpreting the words of the tariff by giving them the ordinary and natural meaning, those words can only mean that the rule removes the limit on the Respondent's liability imposed by Article 21 of the *Montreal Convention* in the manner allowed by Article 25. This interpretation removes any tension between the operation of the tariff and the *Montreal Convention* consistent with the well-established principle that a contract is to be construed objectively and in accordance with its literal terms and relevant context.

    f. The recognition of the need for equitable compensation is consistent with Article 25 permitting airlines to impose their own higher limits on liability or impose no liability whatsoever. The rule provides there are no financial limits in a clear and unambiguous manner and consistent with the operation of Article 25 that permits

a carrier to increase liability limits, or indeed remove any limits, including it is argued the limits in Article 21(2).

g. The Canadian Air Transportation Regulation is not relevant context in Australia and notwithstanding the national affiliation of the Respondent is non-binding on Australian contracting parties, and arguably not relevant.

h. The relevant part of the Canadian Air Transportation Regulation provides:

> *(a) the terms and conditions governing the tariff generally, stated in such a way that it is clear as to how the terms and conditions apply to the tolls named in the tariff;*
>
> ...
>
> *(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,*
>
> ...
>
> *(xviii) limits of liability respecting passengers and goods,*
>
> *(xix) exclusion from liability respecting passengers and goods,*
>
> *(xx) procedures to be followed, and time limitations, respecting claims ...*

It requires limits of liability to be contained in the Tariff and terms and conditions to be stated in a clear way. The Regulation does not require notice of unlimited liability or "*no financial liability*" to be included in the Tariff. The words in Rule 105(C)(1)(a) are clear "*there are no financial limits*". Clearer words could not have been used.

i. There was no evidence that Rule 105(C)(1)(a) was inserted in the Tariff to comply with Canadian Air Transportation Regulation.

j. The description of Article 21(2) as a defence at CA [81]: CAB 38 contributed to the construction error made. There is no defence in the strict liability regime created by the Montreal Convention. There is only the ability to exonerate on a contributory negligence basis pursuant to Article 20 or limit the amount of damages so that they do not exceed the SDR amount payable in Article 22 (1).

k. The insertion of Rule 105(C)(1)(a) in section 105(C)(1) amongst sub rules (b) and (c) which both enhanced the entitlements of passengers by increasing the SDR amounts payable compared to the amounts imposed by the Montreal Convention is consistent with finding that the operation and intention of Rule 105(C)(1)(a) was to enhance the entitlements of passengers and allow a

displacement by way of a stipulation pursuant to Article 25 that there are no financial limits in the event of death or bodily injury and thereby increase the limits imposed through the operation of Article 21(2).

l. The natural and ordinary meaning of the words "*there are no financial limits in respect of death or bodily injury*" should be applied. The words are so clear and unambiguous that the common intention of the parties could not be found to be anything other than an intention there would be no limit on the damages payable pursuant to Article 17(1).

PART VII: ORDERS SOUGHT

42. The Appellants' seek the orders set out in the Notice of Appeal: CAB 104.
    a. Appeal allowed
    b. Set aside the orders of the Court of Appeal and order in their place:
        i. The appeal from the orders made by Rothman J of the Supreme Court of NSW on 12 December 2019 be dismissed
        ii. The Respondent pay the Appellants costs of the proceedings including the costs of the hearing, the Court of Appeal and this Appeal.

PART VIII: TIME FOR ORAL ARGUMENT

43. The Appellants' time for oral argument, including reply, is estimated to be less than two hours.

Dated: 28 November 2024

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ANNEXURE

Pursuant to para of the Practice Direction No 1 of 2019, the particular constitutional provisions and statutes referred to in the respondent's submissions follows:

	Title	**Version**	**Provisions**
1.	Montreal Convention for the Unification of Certain Rules for International Carriage by Air (adopted 28 May 1999, entered into 4 November 2003) 2242 UNTS 309.	Current as at 4 November 2003	Articles: 17,20,21,24,25. 26 and 27
2.	Warsaw Convention for the unification of certain rules relating to international carriage by air (adopted 12 October 1929 entered into force on 13 February 1933 (137) LNTS 11.	Current as at 13 February 1933	Article 22(1)
3.	Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM Uniform Rules), appendix B to the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980 as amended by the protocol of 3 June 1999 for the modification of the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980.	Current as at 1 July 2006	Article 5
4.	United Nations Convention on the Carriage of Goods by Sea (adopted 30 March 1978 entered into force on 1 November 1992).	Current as at 1994	Article 23
5.	Convention relating to the carriage of passengers and their luggage by sea (adopted 13 December 1974) entered into force 28 April 1987 (146) 3 UNTS 19 (*Athens Convention* 1974).	Current as at 28 April 1987	Article 10(1)
6.	*Civil Aviation (Carriers Liability) Act* 1959 (Cth)	Current as at 17 June 2021	Schedule 1A
7.	Canadian Air Transportation Regulations SOR/88-58.	Current as at 12 February 2017	Reg 122
8.	Vienna Convention on the Law of Treaties	Current as at 27 January 1980	Art 31 & 32