



**Universiteit
Leiden**
The Netherlands



Australia and New Zealand Air Law Moot Competition 2014

Case of Business Express Airlines Flight BE 101

1. Enrico (“E”) Gomez and his wife Rosaria (“R”) are market gardeners from Werribee, Victoria. E and R are excited to be heading off to Cairns, where R’s sister, Anna (“A”) lives with her husband Javier (“J”) and their grown-up children’s families. The purpose of E and R’s trip to Cairns is for a surprise party (being planned by J and his children) to celebrate A’s 60th birthday. It will also be a good excuse for a catch-up, as it has been many years since E and R have last caught up with A and J. E, R, A and J are originally from Spain, having made Australia their home many years back. Preferring the warmer climate of North Queensland, A and J decided to settle in Cairns rather than in Melbourne.
2. E has booked a return (Melbourne – Cairns – Melbourne) ticket for himself with Business Express Airlines (BEA). BEA boasts an “all business class” service with extra leg room and larger seats than other airlines. As a further birthday surprise for A, E booked R’s ticket slightly differently. The purpose was for both R and A to travel together on a girl’s weekend to Queenstown, New Zealand after the surprise party.
3. R’s ticket includes onwards travel with a codeshare partner of BEA to Queenstown, New Zealand (Melbourne – Cairns – Brisbane – Queenstown – Melbourne). E also bought the ticket to Queenstown for A, so that she and R will travel together on the same flights to Queenstown, only returning on separate flights to Australia (R to Melbourne, and A to Cairns).
4. BEA uses a system wherein special meals can be purchased ahead of time on their website. Then, the meal is delivered to you during the flight. R selected a “nut free” meal in this way

as she suffers from severe peanut and treenuts allergies. She did not want to take the risk of being served something with nuts in it as this could be life threatening for her.

5. On 26 January 2014, E and R boarded their flight (BE 101) at Melbourne Airport. It is a direct service from Melbourne Airport to Cairns Airport. R had a window seat and E was in the aisle in the 2 seat x 2 seat single aisle jet aircraft. The flight was fairly uneventful, but for the following. E has previously endured lower back pain and sciatica from his heavy manual work (but through good management this has been asymptomatic for 10 years). The lower back pain flared up sharply during the flight and continued after the flight ended. E had a faulty aircraft seat and as it was a full flight, even though he informed the cabin crew about his issues, he could not be moved to a replacement seat. The seat included a movable lumbar support plate, which was actuated by an electrical system. Apparently the system had failed in the fully forward position and the lumbar plate would not move. To make matters worse the backrest was reclined so it felt like he was lying down for the entire flight. The lumbar plate dug into him throughout the flight and he described it as like “lying on a marble bench top”. He thinks this has caused his pain.
6. On the flight R received her “nut free” pre-purchased meal and took her first bite. She immediately felt her throat and airways tighten and her face swell as if she was having an allergic reaction. Luckily, she had her Epipen with her, which she self-administered after struggling for 5 minutes to get over E and his reclined seat. E couldn’t help R because he was in such pain and discomfort, which made R take longer than she would otherwise have taken to get out into the aisle, and retrieve her Epipen from her bag in the overhead compartment.
7. When R was feeling a little better she informed the Steward what had happened. The Steward assured her that BEA’s catering company must have been at fault, rather than the airline. In fact, he said, the entire meal service (including the online ordering system) was run by a contracted catering company (GateGrub) on behalf of BEA. The Steward apologised profusely. E also told the Steward about the seat and the Steward apologised. Apparently the lumbar plate issue was known about but maintenance people did not have time in Melbourne to replace the seat before the flight to Cairns took off.
8. Before long the alarm and panic of the nut incident and the soreness left over from the faulty seat were temporarily forgotten as E and R chatted excitedly about their much anticipated visit with A and J. The plane approached Cairns Airport normally. Just before touch down a loud bang and jolt was heard and the aircraft shuddered, became unstable and landed heavily. Something had hit the aircraft and the left engine on the twin jet aircraft flamed out from the impact. Due to the loss of power and asymmetric thrust the plane landed heavily on its left landing gear and the pilot could not fully control the landing roll. The plane violently spun around to the left and came to rest off the left edge of the runway. The whole series of events threw passengers around, a few of which suffered minor injuries from the violence of the sudden and imbalanced landing and skid off the runway.
9. The cabin crew calmly directed all passengers to immediately leave the aircraft; the emergency escape slides had been deployed. E noticed that there appeared to be smoke outside the aircraft, with a very unpleasant odour (apparently, a flock of flying foxes had flown across the runway threshold just as the aircraft was making its landing flare, and were ingested into the left engine – this had caused the loud bang and flame out of the engine). Airport emergency fire-fighter trucks, ambulance and police cars quickly arrive at the scene.

10. One of the passengers, who was on a one way domestic ticket from Melbourne to Cairns, Brian Bramble ("B"), had not tightened his seatbelt properly before landing, so in the impact he was flung upwards and struck his head on the panel above him. He suffered facial lacerations, a possibly fractured skull and a strain to his cervical spine. He was the only passenger requiring immediate medical attention once he had made it out of the aircraft.
11. The passengers were bussed back to the terminal (B was attended upon by ambulance paramedics). Whilst thankfully neither E nor R appeared to have sustained physical injuries from the landing, they are both understandably quite shaken. Just as E and R were about to exit the terminal to catch a taxi to A and J's home, R noticed that E became very pale and was sweating profusely. E mumbled that he was not feeling well, and sat down on a chair in the terminal. He appeared to be short of breath and had both his hands on his chest. Fearing that E was experiencing a heart attack, R yelled out for assistance. Promptly an ambulance paramedic team arrived, and administered oxygen to E. Almost instantly, E became more settled and the colour returned to his face. Whilst the paramedics suspect that E had suffered a major panic attack (his heart rate and blood pressure have returned to normal) they recommended that he be taken to hospital, just to be sure. R agreed, and E was taken to hospital for checking along with B who was the only other passenger in need of further treatment.
12. Routine blood and cardiac tests conducted at the hospital confirm that E did not suffer any heart condition. As his back was still hurting quite badly (with pain radiating down his legs) the hospital conducts scans and discovers that E's L5 disc has "slipped". He is given pain relief. Given E's very anxious state when he was attended upon by the paramedics, the emergency room doctor arranged for a nurse from the hospital's psychiatric unit, Sharon ("S") to have a chat with E, prior to E being discharged. In E's discussion with S, E mentioned that the reason he became very anxious and went into a panic attack at the airport was because the morning's events reminded him of a terrible accident involving a major aircraft crash many years ago. E was very emotional, and did not wish to elaborate further. S was most understanding and supportive. She recommended to E that he see Dr Insight ("Dr I") a consultant psychiatrist who works with S and her team at the hospital. S arranged an appointment for E to see Dr I. The emergency room doctor prescribed anxiety and sleep medication for E to be used if needed, as E appeared to still be in a mildly anxious state.
13. At the consultation a week later at Dr I's rooms, E recounted how the recent events at the airport brought back a flood of memories of a horrific event that he was exposed to years ago. In 1977, E and R were living on the island of Tenerife, a Spanish owned territory off the north-eastern coast of Africa. E was working at the time as an airport maintenance technician; R was working as a hotel maid, as well as looking after their then infant children. Unfortunately, E was working at Tenerife airport on the very day of the world's worst aviation disaster, when two large passenger aircraft collided on the same runway. E assisted at the accident, and witnessed the horrific loss of life and injuries. E later had suffered a nervous breakdown and was unable to continue working at the airport. He and R returned to Madrid. Although E was treated for a short period by a psychiatrist in Madrid, E and R were compelled to seek a "fresh start" by migrating to Australia with their children to join A and J who were at that time living in Melbourne. Their new life in Australia and the passing of time assisted E to gradually put the experience behind him and to move on. Unfortunately, this recent incident "brought everything back" for E, who, amongst other things, was finding it difficult to sleep, was experiencing mood swings, and developed a fear of flying. Dr I has

diagnosed E as suffering from a form of post-traumatic stress disorder, with a retriggering of repressed memories. Dr I has prescribed E with anti-depressants, and commenced E on a course of therapy (admission for a short period to a psychiatric clinic has not been ruled out).

14. At the hospital it is discovered that B has a fractured skull which required surgical repair as well as the release of pressure around his brain from swelling. He is admitted to hospital and is told he will need to remain for some time to ensure the swelling does not continue, and to ensure his head wounds heal properly. Once the surgery is over and during the following weeks B is extremely frightened by his memories of the hard landing and the impact of his head. He suffers nightmares and is diagnosed also by Dr I, of having post-traumatic stress disorder. This has impacted his ability to return to work in Cairns and work as effectively in future in his normal occupation (anaesthetist).
15. When R is examined at the hospital blood tests confirm she was indeed exposed to peanuts in her meal. R only experiences an allergic reaction when tasting peanut, so it could not have been due to exposure in the air to peanut dust or similar. She is prescribed some mild antihistamines and rest.
16. B, E and R seek compensation for the injuries and losses they suffered as a result of flight BE 101. The airline has informed E and R that it is not liable to them because their injuries were as a result of their own "internal reactions".

For convenience, the injuries and damages B, E and R claim for are set out below:

B:

- Injuries: fractured skull, strains, and lacerations from the hard landing; post-traumatic stress disorder (PTSD) from the hard landing
- Damages: medical expense for surgery, rehabilitation and follow up care including physiotherapy for 6 (six) weeks; a course of psychotherapy for 12 months and 12 months of antidepressant therapy; missed work for 4 (four) weeks; an independent medical report shows B is unlikely to be able to continue working in his profession and may need to retrain to do another less sensitive job).

E:

- Injuries: herniated lumbar disc from the faulty seat (and/or the hard landing); PTSD from the hard landing
- Damages: psychotherapy for PTSD; reimbursement for the value of the ticket; treatment for the back injury including physiotherapy, massage and pain medication for 6 weeks.

R:

- Injury: allergic reaction to the meal
- Damages: cost of antihistamines and ointment/calamine lotion.

NOTE:

Teams acting for the Plaintiffs act for each of B, E and R through their firm XYZ Lawyers.

Teams acting for the Defendant act for BEA, an airline incorporated in Australia.

The claims have been brought in the Supreme Court of Victoria and the Court has ordered the parties to each provide an Outline of Argument which complies with the form requirements in Supreme Court of Victoria Practice Direction 3 of 1995.

The Outlines provided by each team (one for Plaintiffs and one for Defendant) must each address these threshold two (2) questions:

1. Which Australian and international laws set out rights to compensation for *each* of B, E, and R and, pursuant to these laws, in which jurisdictions can each of them bring legal action?
2. BEA is required to be insured for passenger liability. Which Australian and international laws provide this obligation?

The Plaintiff's Outline of Argument must also canvas, supported by relevant authority:

- The arguments of each of B, E, and R in support of their claims for compensation?

The Defendant's Outline of Argument must canvas, supported by authority:

- The arguments BEA could use to avoid or minimise its liability for each of B, E and R's injuries?

Notes on moot rules and procedure:

1. This case/problem uses real country examples so competitors may assume that the liability conventions and other air law instruments which have been ratified by the countries named, apply to this fact scenario.
2. Each team is permitted to address 5 written, succinct questions seeking clarifications about the case scenario in a maximum one page letter to the Moot organisers emailed on or by **6 June 2014**.
3. The moot organisers' responses to all the questions will be provided to all teams in relation to the questions by **9 June 2014**.
4. The due date for notification of team registration is **1 June 2014** (however, notifications received shortly after this date will be considered).
5. Each teams' Outline of Arguments (one for the Plaintiff and one for the Defendant) are due by email (**pdf format only**) by **15 June 2014**. Plaintiff outlines must have a GREEN coloured cover page, and Defendant outlines must have a RED coloured cover page.
6. Each moot team will have no more than three members, and only two of whom will participate in each moot in any round of the competition from **9-11 July 2014**. Teams may choose their speakers in any round at their own discretion. Team members must be current students of a LLB, JD, or LLM program (doctoral candidates are not eligible to partake).
7. Each moot team may have **one** faculty/college/school adviser who may be a staff member or external adviser of the university designated by the participating institution as an adviser.

8. Each team must nominate a **team contact person** for all official correspondence with the moot organisers. They must provide a valid email address for this purpose.
9. Outside assistance which would interfere with the final product being the exclusive work of the team members is strictly prohibited.
10. Outside assistance to a team in preparation of the Competition, including that of faculty/college/school members will be limited to a general discussion of the issues, suggestions as to research sources and training in presentation in public.
11. Under no circumstances shall anyone who has in any way and at any stage participated in the drafting of the Case provide outside assistance to any of the participating teams.
12. Matters in relation to the scoring of Plaintiff and Defendant Outlines of Argument, as well as the format and scoring of oral rounds will be emailed to each registering team's contact person as soon as practicable after a team's registration.

Moot Organisers and Contacts

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