



# Law at 30,000 Feet

## Who Governs Airline Passenger Rights?

LEGAL PERSPECTIVE FROM HANS N. HUGGLER

Spring is here, and with it the start of the seasonal bump in travelers passing through airports — a rise of almost 600,000 passengers per month at PDX alone. While every traveler has a horror story, few know the rules that govern their journey. When you're next entertaining foreign clients, reuniting with visiting friends, or sitting in the middle seat on a cross-country flight, here are some conversation starters on what laws apply when passengers fly.

### You and Your Seatmates May Have Different Passenger Rights

Whether a passenger is traveling in "international" or "domestic" carriage dramatically changes passenger rights. On flights between Montreal Convention member countries (including the U.S.), that treaty imposes "strict liability" on carriers for injury to luggage or passengers but caps liability at about \$1,900 per bag and about \$145,000 for injury or death. The less passenger-friendly Warsaw Convention provides lower caps for most other international flights.

Up until 2010, domestic carriers could impose conditions to liability that severely limited passengers' ability to recover for lost baggage. However, the Department of Transportation now bars domestic carriers from excluding the first \$3,500 in liability for lost bags. As to injury or death, carriers can and do limit their liability to only situations in which their "sole negligence or willful misconduct" is the proven cause of harm.

Whether a passenger is engaged in "international carriage" is a passenger-by-passenger analysis. For example, if you are flying from Portland to New York to London on separate domestic and international carriers, your Portland-New York leg may still be in "international carriage" if you purchased both legs together or the domestic carrier knows you are connecting internationally. As a result, when sitting in that middle seat you may be traveling under Montreal, your right-side neighbor under Warsaw, and your left-side neighbor under the limits of your carrier's "Contract of Carriage."

### Seats *Can* Be Too Small for the Law

Seat pitch (the distance between any point on a seat and the same point on the next seat) has been decreasing for two decades, with major airlines dropping from a range of 31-36 inches in 1985 to 30-33 in 2014. Some commercial flights now offer pitches of just 28 inches. Recently, a federal appeals court found the FAA had been "arbitrary and capricious" when it declined to regulate seat space to ensure passenger safety during evacuations.

The FAA, the court found, had "failed to provide a plausible evidentiary basis for concluding that decreased seat sizes combined with increased passenger sizes have no effect on emergency egress." Responding to the FAA's assertion that "seat dimensions are categorically unimportant to emergency egress," the court noted that "As a matter of basic physics, at some point seat and passenger dimensions would become so squeezed as to impede the ability of passengers to extricate themselves from their seats and get over to an aisle. The question is not whether seat dimensions matter, but when."

The court remanded the petition to give FAA another chance to show it is safe for small seats to stay.

### Can Pigs Fly?

Emotional support peacocks, therapy turkeys and ponies dominate click-bait news headlines. Passengers' legal right to bring support animals aboard flights is not provided by the well-known Americans With Disabilities Act, but by the more-permissive Air Carrier Access Act, which permits "any animal" (with a few exceptions) trained to support a passenger. Carriers can



refuse to accept animals that are too large, that pose a direct threat to health or safety, or that will significantly disrupt cabin service. Carriers can also request specific documentation and advance notice before permitting animals flying for emotional or psychiatric support.

Carriers cannot refuse to permit animals to board based on the discomfort of crew or other passengers, but can refuse animals that engage in disruptive behavior. The law does not require a carrier to re-seat passengers who object to being seated next to an animal. Foreign airlines operating in the U.S. are only required to accept dogs, while U.S. carriers flying overseas must comply with the destination's laws on the transport of animals.

### Know the Rules

These are only a few of the web of treaties, laws, and cases that govern passenger rights as well as carrier and ground operations and air cargo. Make sure to check whether any special rules apply before entering into business ventures involving aviation and review your contract of carriage if trouble arises on your trip. And the next time you want to make a friend from that middle seat, you've got three icebreakers every traveler will have an opinion on! ■



Hans N. Huggler is an Associate at Lane Powell whose diverse legal practice includes work in the transportation, insurance and banking industries. Reach him at [hugglerh@lanepowell.com](mailto:hugglerh@lanepowell.com).