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# Air Passage: European Ticket Exemption Clause

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# NOTES AND COMMENT

## Air Passage: European Ticket Exemption Clause

The extensive and intensive development in Europe of passenger transportation through the air at a time now some years past when the dangers inherently connected with such travel were considered greater than they are considered today naturally brought about the insertion into the contracts of transportation of an exemption clause to the effect that the passenger by accepting air transportation waives for himself and his legal representatives all claim for any damage or injury occurring mediately or immediately to himself, his personal effects and his baggage during or in connection with a flight. This or a similar provision is found today in the tickets issued by most of the European air lines. Some even exempt in express terms damages or injury occurring in connection with the automobile which takes passengers to and from the airport. That such an exemption must raise important legal issues is a foregone conclusion.

In 1925 a plane lost its way from Stuttgart to Munich and was forced down in Switzerland and a passenger was killed. The ticket contained a stringent exemption clause. The Reichsgericht held that the clause was ambiguous and would not be construed to exempt from damages occurring through the misconduct of the pilot; that the word "danger" occurring therein will be construed as referring to the general danger from such a voyage which was considered greater in 1925 than in 1927; and that as air navigation becomes more general so that the public will be forced to use the planes even the general clause might not be upheld. (1927 *L.* v. *Aero Lloyd* A.G. and H 56 *Juristiche Wochenschrift* 2210, 117 *Entscheidungen des Reichsgericht's* 102, reversing 1 *Zeitschrift fuer des gesammte Luftrecht,* 220.)

In another case arising at about the same time the same court said: "That air traffic is inseparably connected with special dangers was well known in 1925. They were considered greater then than now. It was *these* dangers which the passenger would think of when he heard that he was to assume the risk and waive the liability of the airplane owner. The thought of a complete waiver of any damage caused by the fault, perhaps the gross fault, of the owner was more foreign to his thinking. To cover such a waiver he was entitled to a notice which could not be misunderstood." (1 *Zeitschrift fuer das gesammte Luftrecht,* 296.)

In view of these decisions of the highest court of Germany the opinion of the Amtsgericht at Emden in the matter rendered in 1925 though it

was reversed by the Kreisgericht at Aurich (1 *Zeitschrift fuer das gesammte Luftrecht,* 222) has commanded such high respect in Europe that it has even been translated into French (10 *Revue Juridique de la Locomotion Aérienne* 503). An extended extract from this well-reasoned opinion therefore would seem to be in place. The court says: Though it may be admitted with Bredow-Mueller (Air Law Statute Annotations to § 19 subsection 2a 1) that the owner of a plane may in a single case limit his liability since the claim according to § 19 is of a private nature yet there are against a general exemption clause strong legal and moral objections, particularly when it comes to circular flights at a popular bath where a great number of guests daily grant themselves the pleasure of a flight. The air with its currents contains for its traveler greater danger than does the railroad track or the highway. The stringent liability created by §19 which is unprecedented in legislation has the purpose of affording to the citizen during the use of aircraft which are more and more becoming means of transportation all imaginable safety which the developing technical science can only afford to a limited degree. This is so at least to the extent of giving him the right to damages to be mitigated or excluded only through his own fault. It is necessary for legislation to take this course even as an inducement to technical improvements in air navigation. The exemption of liability for personal injury contended for by the defendant therefore is against public policy. The contention of the defendant that the aircraft liability risk is only a small part of the possible claim for damages according to §19 is not well taken. If the defendant admits liability toward a person who is not in privity of contract with her she cannot in justice refuse damages to a passenger for injuries happening during the operation of the plane. The contention of the plaintiff is well taken that the greatest possible protection must be afforded to those who through using aircraft as passengers essentially contribute toward the support of aërial navigation and afford it the means of further development. It is exactly the very fact that aërial navigation is becoming more and more a means of transportation which demonstrates the necessity of making it increasingly safe through the most stringent enforcement of liability. An exemption such as defendant contends for emasculates the statute. (44 *Eisenbahn und Verkehrsrecht Entscheidungen,* 237, 1 *Zeitschrift fuer das gesammte Luftrecht,* 55.)

A Czechoslovakian court in a case where the exemption clause was printed in the French and Czechoslovakian languages and the plaintiff knew neither language has said that an earnest and definite contract for exemption from negligence is necessary and that it is not sufficient that a one sided and meaningless assertion is made by handing the ticket to the passenger without calling his attention to the exemption clause.

(*Zivilantsgericht* in Prague, 1927, 2 *Zeitschrift fuer das gesammte Luftrecht,* 56)

Finally the Reichsgericht in another opinion has said that it would be beyond reason if after the full development of air navigation the general public were dependent on the use of such navigation to allow the air companies to misuse their monopoly and the situation of the public to force passengers to waive the protection which the statute gives them. (46 *Eisenbahn und Verkehrsrecht Entscheidungen, und Abhandlungen,* 93, affirmed 1 *Zeitschrift fuer das gesammte Luftrecht,* 296.)

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**Carriers: Valuation of: Rate Making**

The importance of the question decided in *St. Louis and O'Fallon Ry. Co., et al* v. *United States, et al,*[1] and *United States, et al* v. *St. Louis and O'Fallon Ry. Co., et al,*[2] made it one of general interest when the decision was announced last May. The question involved in brief was this:

How should the value of railroads be determined so that a fair return might be had on the capital invested? The answer to this question is one which affects the inhabitants of the United States individually, either as users of the railroads or as investors.

The "Transportation Act of 1920"[3] provided that the Interstate Commerce Commission should have authority to fix a reasonable uniform rate for railroads in various districts so that a return of 6 per cent might be had on the capital invested in property "held for and used in the service of transportation" as a fair return upon such investment. It was further provided that "if, under the provisions of this section, any carcier receives for any year a net railway operating income in excess of 6 per cent of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier and the remaining one-half shall be . . . . paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund."

In other words, the Commission is authorized to set 6 per cent as a maximum return on the amount of money invested in railroads. Realizing that in some sections of the country the stronger roads would, under the uniform rates established by the commission, earn more than 6 per cent on their invested capital; the Transportation Act further provided that a fund should be established out of the surplus earnings of these roads to aid the weaker roads of the same district.

[1] 49 U.S.C.A. No. 15a.
[2] 49 Sup. Ct. Rep. 384.
[3] 73 L.ed. 457.