

This is the fourth in an occasional series in which partner Nick Cox takes a closer look at some of more obscure corners of the law. Sometimes, even the most seemingly remote bits of legislation can prove surprisingly useful.

## Obscure legal terminology: Schedule 1 to the Carriage by Air Act 1961

by litigation partner, Nick Cox

The warning arises from our old friend The Warsaw Convention of 1929 which was incorporated into English Law some thirty years late by the Carriage by Air Act (CBAA).

The scene is Nadi Airport in Fiji where one Dr Phillips was returning to the UK after a rest-cure in New Zealand. As she was travelling in a wheel chair she needed a porter to help her into the lift and onto the aeroplane when her flight was called.

Quite what occurred in the lift was disputed, but the unfortunate doctor was left with a whiplash injury and claimed that it affected her so much that she lost earnings of over £800,000. She sued Air New Zealand.

Her solicitors issued proceedings to recover her losses just within the three-year limitation period specified in English law. However, they overlooked the fact that under the CBAA the limitation is only two years. "Out of time" cried the airline. "Not so" replied Dr Phillips "I was in the terminal building, not flying anywhere". "But" said the court, "you had begun to 'embark' and as such the Convention applied".

As the claim could only be brought under the Convention and the relevant time limit had passed, Dr Phillips had no claim.

The moral of the story: If you are going to be injured in a terminal building, make sure that its before they call your flight!

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