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with Particular Reference to Iran

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with Particular Reference to Iran

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Hamid Kazemi
Leiden, 2012
This manuscript is dedicated to:

My parents, Ahmad and Effat,

My wife, Akram Tayyebi,

My son Ali,

My brothers Hussein, Asghar and Reza,

For you, who are the perfect components in my equation of happiness
Preface

The author’s interest in air carrier’s liability, and the conflict between the Shariah and private international air law, took root in 1996 when he was completing his M.A. thesis on the role of international law in the investigation of air accidents. Two years preceding that, an air accident involving Aseman Airlines occurred in Iran. At that time, heated discussions took place between Islamic jurists and legal experts on the liability of the air carrier for the death and bodily injury suffered by the passengers. In the course of the court proceedings, it transpired that there was a conflict between the Shariah principles and those of private international air law. Whilst the Shariah prescribes the Diyah in the case of death or bodily injury, this differs from the principles of liability and compensation under private international air law. The critical question that emerged was whether the Warsaw-Hague rules should have priority over the Shariah when determining liability for passenger’s death and bodily injury. No decisive unified opinion has hitherto been held on the matter. Indeed, diverse views have been proffered by the Iranian courts and legislative bodies.


The Guardian Council of the Constitution, which consists of Islamic jurists, claimed that the Shariah regulations have priority over the rules of the Warsaw Convention. They should therefore prevail in cases of conflict of laws. However, this point of view may impede the attainment of uniform regulation of air carrier’s liability.

Working for the legal bureau of the Civil Aviation Organization of Iran was an opportunity to be closely involved in and therewith learn about aspects of air carrier’s liability. When the author decided to pursue a PhD in air law in 2005, he chose to work on the legal aspects of air carrier’s liability for death and bodily injury. With this in mind, this thesis aims to investigate and compare the principles of liability in private international air law with those of the Shariah. In particular, it will critically study the relevant laws in two common law countries (England and the United States) and
two civil law countries (France and Germany) that have had significant influence on private international air law. These will be compared with the *Shariah* system which underlies Iranian law.

Since the liability principle for death or bodily injury in the *Shariah* may be at odds with those outlined in international rules, the principal aim of this thesis is to find a way forward that would help promote uniformity of international air carrier’s liability. It will be argued that contrary to the views of the Guardian Council of the Constitution, in the event of a conflict of laws, it is possible to reconcile the *Shariah* principles of liability with the Warsaw-Montreal regime. Also, Iran may adopt the Montreal Convention 1999. Any probable conflict between the provisions of this Convention and the *Shariah* can be resolved through the application of a specific statute by the Parliament.
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