The Warsaw Convention, which defines the liability of the carrier and defences available to him also states the rights and duties of the consignor and the consignee. Every contract has two parties to it and it is essential that rights and obligations of each party are clearly stipulated so as to avoid confusion and resultant disputes leading to wasteful litigation. To achieve this objective the Convention contains adequate provisions to clarify these rights and obligations inter se of the parties to the contract. These provisions are mainly contained in articles 12, 13 and 14 of the Warsaw Convention, 1929 which should be read in conjunction with relevant provisions elsewhere in the Convention. These guiding rules can, however, "be varied by express provision in the air consignment note." ¹ But such amendments as contemplated by the parties should not contravene the basic provisions.

¹. The Warsaw Convention, 1929, article 15(2)
of the Convention and are to be specifically included for the intended purpose.

**STATUTORY RIGHTS OF CONSIGNOR**

The Right of Disposition

Under the Convention, the air consignment note is not a negotiable document, but the consignor has been afforded a right of disposition of the cargo after the same have been placed at the disposal of the carrier for carriage by air. The consignor has the following options in which he can exercise his right to change disposal of goods.²:

(a) by withdrawing them at the aerodrome of departure,
(b) by withdrawing them at the aerodrome of destination,
(c) by stopping them in the course of journey on landing,
(d) by calling for them to be delivered at the place of destination to a person other than the consignee named in the air consignment note.

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². Ibid, article 12(1). Regulations as to exercise of this right are also contained in IATA General Conditions of Carriage, article 16.
(e) by calling for them to be delivered in the course of the journey to a person other than the consignee named in the air consignment note,
(f) by requiring them to be returned to the aerodrome of departure, and
(g) the consignor also reserves his right of disposition when "the consignee declines to accept the consignment note or the goods or if he cannot be communicated with." 3

However, this right of the consignor for ordering stoppage in transit 4 and requiring altered disposal of goods is not absolute. This right has to be construed not only from the contract between the carrier and the consignor but also with reference to the contract of sale defining the relations between the consignor and consignee, as seller and buyer respectively. This right of disposition is therefore subject to the following restraints:

(a) The consignor must discharge his liability to carry out all his obligations under the contract of carriage.

(b) The consignor "must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors." 5

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3. Ibid, article 12(4).
4. Ibid, article 12(7).
(c) The consignor shall be liable to repay any expenses occasioned by the exercise of this right.

(d) The exercise of this right by the consignor should not affect his mutual relations with the consignee as seller and buyer respectively which may be required by the Sale of Goods Act, 1930. This act stipulates that when notice of stoppage in transit is given by the seller to the carrier, the latter must redeliver the goods to or according to the directions of the seller. While directing the change the consignor is exercising his right as unpaid vendor of goods who retains the property in goods consigned and bears the right to stop the goods in transit till full price is paid or in the case of insolvency of the buyer. 5

(e) The consignor's right of disposition is also constrained by the relevant provisions of the Sale of Goods Act, 1930. "Where the goods are delivered to the carrier for carriage under a contract with buyer, and the seller does not reserve the right of disposal, the moment the goods are delivered to the carrier, the carrier becomes the agent of the buyer, as the property in goods passes to the carrier

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(sic)\(^6\) provided the goods are as per the specification or sample.\(^7\) Therefore, the right of stoppage can be exercised by a consignor in his own interest as consistent with the contract of sale. The carrier is only liable to obey, should this be feasible.\(^8\)

(f) The exercise of this right should not adversely affect the relations of the consignor or consignee \textit{via a via} the mutual relations with the third parties whose rights are derived either from the consignor or from the consignee.\(^9\)

(g) Lastly, the exercise of this right of disposition is conditioned by the capacity of the carrier to obey and execute the same. Because, the carrier is empowered to refuse compliance "if it is impossible to carry out the orders of the consignor", but "the carrier must so inform him forthwith."\(^9\)

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6. It should read "buyer" or "consignee" as per the \textit{Warsaw Convention, 1929}, article 12(4).


9. Ibid, article 12(2).
Implications of the Rights

First, this right is exercisable by the consignor subject to clearance of all liability and fulfilment of all obligations under the contract of carriage. This would imply, inter alia, the payment of freight and other charges. The Convention however, the parties are free to negotiate and affix responsibility regarding the person (whether consignor or consignee) and the place of payment of the freight and any other charges and annotate the same on the air consignment note. The Convention does not mandatorily specify any party for the payment of freight charges. In fact either party or even a third person could be detailed and made liable for such payment of freight and any other charges.

Therefore, where the consignor exercises his right of stoppage in transit or resumes his right of disposition, when the consignee declines to accept the consignment note or the goods or cannot be communicated with, then the responsibility for clearance of all dues

10. Incidentally, the carrier has a particular lien on the property carried for the freight payable. Refer Gandhi note 7, pp.97-8.

11. The Warsaw Convention, 1929, article 8(k).

to the carrier rests on the consignor, even if it had been agreed that the freight and other such charges were to be paid by the consignee. Further, the consignor is also liable for expenses incurred by the carrier for compliance of consignor's direction. It thus gives the carrier a right to be fully indemnified by the consignor when the former duly acts on the latter's valid and rightful instructions of disposition, even though these may later turn out to be wrongful as against a third party and infringe jus tertii.

Secondly, if the carrier find it "impossible" to implement the instruction of the consignor, he must forthwith inform the latter. This clause safeguards the interest of the carrier under such contingencies where he may be unable to honour the consignor's directive on disposition. The clause "if it is impossible to carry out the orders" should be construed as physical or practical impossibility and not to imply the state of being humanly impossible. Nevertheless, the onus of proof should rest on the carrier to satisfactorily explain that the goods were not within his reach or control when he received the intimation or notice from the consignor. It could be for any of the following reasons:

(a) That the goods had already been delivered to the consignee.
(b) That it was not possible to communicate his agents for requisite compliance.
(c) That on account of certain operational exigencies or compelling circumstances it was not feasible.
(d) That the goods had been lost, destroyed or misplaced in transit.¹³

In any event of such non-compliance, the carrier must immediately inform the consignor of his inability to execute his instructions relating to disposal in transit. If the carrier unduly delays this intimation of his incapacity to the consignor, as a consequence of which any injury or prejudice to the interests of the consignor is caused, the carrier would accordingly be liable for any damage so caused by his delay for lack of due promptitude or non-compliance.

Thirdly, this right of the consignor ceases the moment when the property in the goods is transferred to the consignee in terms of the contract of sale executed in accordance with the Sale of Goods, Act, 1930. Because as soon as the right in property changes to the consignee whether on full payment or based on the

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¹³ Refer Gandhi, note 7, pp. 96-7.
stipulations in the contract of sale, the carrier becomes an agent of the consignee and severa\'s control from the consignor.

Further, when the above provision of article 12 of the Convention is read in conjunction with article 13 thereof, it becomes amply clear that the consignor\'s right of disposition terminates and the consignee\'s right of delivery comes into effect under the following circumstances:

(a) On arrival of the goods at the place of destination. (article 13(1)).

(b) On expiration of seven days after the date on which the goods ought to have arrived at the destination. (article 13(3)).

(c) On admission of loss of goods by the carrier. (article 13(3)).

Lastly, if the carrier obeys the orders of the consignor for disposition of the goods without requiring production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note. This provision protects the

14. The Warsaw Convention, 1929, article 12(3)
interest of the carrier to enable him to check up and reasonably ascertain that the person issuing instructions in exercise of this right of disposition is the actual consignor or the real owner of the goods and to decide whether the instructions are valid and should be complied with. In case of the carrier without establishing the identity or bona fides of the authority issuing such instructions or without requiring him to produce his part of the consignment note, were to hurriedly and injudiciously, execute stoppage of goods in transit, he will be held liable to the true party for any damages incurred. Of course, the carrier shall be entitled to recover due compensation from such unauthorised person for the consequences of his illegal direction. Such right of recovery might also arise from the express contract or from a constructive contract of indemnity. 15 Incidentally, the carrier also has a right to be indemnified by the consignor, if compliance of his valid directions turns out to be wrongful as against, or to the prejudice of, a third party.

STATUTORY RIGHTS OF CONSIGNEE

The Right to Delivery

The consignee is entitled, on arrival of the

15. CN Shawcross etc., note 5, p. 361.
goods at the place of destination, to require
the carrier to hand over to him the air consignment
note, and to deliver the goods to him.......
But this right of the consignee is subject to the
fulfilment of the following conditions:

(a) That the consignor has not exercised his
right of disposition of goods or that the notice
of such disposition is not valid or the same
cannot be complied by the carrier. (Article 12).

(b) That the consignee makes payment of the
charges due to the carrier whether for freight
or other levies already agreed upon. (Article
13(1)).

(c) That the consignee shall comply with the
conditions of carriage set out in the air
consignment note. (Article 13(1)).

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16. This refers to the second part of the air consignment
note marked "for the consignee", which copy is
supposed to accompany the goods. Refer Warsaw Convention,
1929, article 6(2).

17. Ibid, article 13(1).

18. Incidentally, the carrier has a right of particular
lien on the goods carried and can refuse delivery
to the entitled person until all charges due under
the contract of carriage are fully paid. Cf. Shawcross,
Thus, if the consignor does not direct stoppage of goods *in transit* or does not exercise his right before the same had expired and the goods had arrived at the place of destination, then the consignors' right of disposition ceases and the consignee's right to receive the goods arises. Unless, of course, the consignee declines to accept delivery or does not take delivery within a reasonable time after requisite notice of arrival of goods has been communicated to him by the carrier or does not make full payment for the charges due or fails to comply with the contractual conditions set out in the consignment note.

It is the duty of the carrier to give notice to the consignee as soon as the goods arrive. But the Convention permits that it need not be incumbent on the carrier to serve such notice or despatch a communication to the consignee provided the parties have agreed to any other arrangements or mode for communicating such information regarding the arrival of goods or that the consignee has been made responsible to check up for the arrival of goods and take delivery thereof accordingly. 20

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20. ibid.
Right of Action

The consignee can enforce his rights covered under these provisions and those flowing from the contract. In case of breach, he can proceed in action against the carrier "in his own name," whether he is acting in his own interest or in the interest of another provided that he carries out the obligation imposed by the contract. 21

The right of action arises under following events:

(a) If the carrier admits the loss of the goods in transit. (Article 13(3)).
(b) If the carrier has failed to communicate the arrival of goods to the consignee and the consignor has resumed the right of disposition. (Articles 13(2) and 12(4)).
(c) If the goods have not arrived at the place of destination at the expiration of seven days after the date on which they ought to have arrived. (Article 13(3)).

The consignee's remedy for delay arises after the expiry of the statutory grace period of seven days 22 after the date on which they ought to have arrived."

22. Ibid, article 26(2). This period has been enhanced to 21 days under the Hague Protocol, 1955, article XV.
But this period can be varied under the contract through mutual agreement. Whatever be the grace period provided to await the arrival of goods, it is important that the clause "ought to have arrived" should not be applied too strictly but be interpreted with due flexibility and on the touchstone of "reasonableness". Aerial transportation is beset with several imponderables and due regard should be paid to delays which were not brought about by the default of the carrier. These could be consequent to considerations of flight safety and security, the frequency of services or due to the circumstances of *force majeure*. However, in such cases of delay, it is mandatory that a complaint in writing must be made to the carrier within 14 days from the date on which the luggage or goods have been placed at the disposal of the carrier.24

The consignee, and the consignor as well, has a right of action against the carrier for causes arising out of their respective rights, provided these do not affect either the relations of the consignor or the consignee with each other or the mutual relations

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23. Ibid, article 8(p).

24. Ibid, article 26(2). This period has been enhanced to 21 days under the *Hague Protocol, 1955*, article XV.
of third parties whose rights are derived either from
the consignor or from the consignee.25 However, the
nature or content of these rights can only be varied by express provision in the air consignment
note.26 Thus the rights of the parties inter se
can be amended and adapted to the circumstances
by incorporation of intended clauses in the
consignment note. Interpreting the above in relation
to the general tenets of commercial law, the consignor
has a right to stoppage of goods in transit and the consignee to the delivery at the destination. They
both have a right against each other either to claim the price of goods sold and delivered or for damages
when the consignee declines to accept the delivery of the goods as per the contract of carriage. In cases,
where a consignment note is endorsed in favour of a
third party, the consignees' rights remain unaffected
by this provision.27

25. The Warsaw Convention, 1929, article 15(1).
26. Ibid, article 15(2).
27. Incidentally air consignment note possess only
limited characteristics of the document of title.
Refer H. Flein, Law of the Air (London, Stevens & Sons,
3rd ed. 1964), pp. 150 et seq.
STATUTORY DUTIES

Just as certain rights flow from the provisions of the Convention and the conditions of the contract, similarly certain duties are also enjoined on the consignor and the consignee to discharge their respective obligations in order to eligible to exercise their rights. Some of the statutory duties which appear dispersed over the various provisions of the Convention are consolidated in the succeeding paragraphs for a proper appreciation of their scope and implications.

Duties of the Consignor

The various duties of the consignor outlined in the Warsaw Convention are discussed below with reference to the relevant provisions:

(a) It is the duty of the consignor to prepare the air consignment note in three parts and if so required by the carrier, separately for each package when the consignment comprises more than one package. Even if the note is prepared by the carrier or any other person, the responsibility for the same still vests on the consignor (articles 6(1), 6(5) and 7).

(b) It is the duty of the consignor to ensure correctness of the particulars and statements
relating to the goods which he inserts in the air consignment note". Irrespective of the manner and the person by whom the note is filled in, the responsibility for any mistake, inaccuracy or incompleteness fully and solely vests with the consignor and he remains "liable for all damages suffered by the carrier or any other person by reasons of the irregularity, incorrectness or incompleteness of said particulars and statements." (article 10).

(c) It is the duty of the consignor to "furnish such information and attach to the air consignment note such documents as are necessary to meet the formalities of customs, petroli or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents ...

28. It is therefore statutorily incumbent upon the consignor to ascertain the formalities required in connection with export/import regulations of respective countries and strictly comply with the same because "the carrier is under no
obligation to enquire into the correctness or sufficiency of such information or documents." He may, however, informally and without prejudice to his rights, advise on this requirement. Generally, the following documents are required to be attached to the air consignment note. 29:

(i) Document in support of the fact that the goods are invoiced.
(ii) Document showing that such import is permitted in consignee's country-
(iii) Export permit in respect of certain controlled category of goods.
(iv) Customs declaration.
(v) Declaration of value for octroi and customs purposes.
(vi) "No objection" certificate from local police as required under local laws.

(b) It is the duty of the consignor that he must discharge his liability to carry out all his obligations under the contract of carriage before he can exercise his right of disposition. Further,

29. This list is only a guide and illustrative in nature. It is not intended to be authentic or comprehensive. Cf. AB Gandhi, note 7, p. 102.
he must not exercise this right of disposition
in such a way as to prejudice the carrier or
other consignors... Should any damage be
cased in any manner in compliance of the
consignor's directive, "he must repay any
expenses occasioned by the exercise of this
right" (article 12(1)).

Duties of the Consignee

A few duties of the consignee as extracted from
the various provisions of the Warsaw Convention are
discussed below:

(a) On being so informed by the carrier regarding
the arrival of the cargo, the consignee must take
the delivery of the same within a reasonable
period (article 13).

(b) The consignee is bound to make "payment
of the charges due" and to comply with the
conditions of carriage set out in the air
consignment note "before he can enforce delivery
of the goods. This issue assumes importance
because the carrier has a particular lien on the
goods for the recovery of his valid and
due charges (article 13(1)).

...