[3] *Campbell v Air Jamaica Ltd* 863 F 2d 1 (2nd Cir, 1988), 21 Avi 17,755 (where the case remanded for this issue to be further considered; reported at 891 F Supp 2d 1338).

[4] *Re Air Disaster at Cove Neck, New York, on January 25, 1990; Gutierrez v Avianca (Aerovias Nacionales de Colombia SA)* 774 F Supp 718 (ED NY, 1991), 23 Avi 18,017.

[5] *Singh v Tarom Romanian Air Transport* 88 F Supp 2d 62 (ED NY, 2000), 27 Avi 17,670 (held on facts to be brokerage only).

[6] See J Heinamen, 'The Warsaw Convention and the Internet' (2000) 65 JALC 497; R Abeyratne, 'Airline ticket auctions on the Internet' [1999] TAQ 91 and the same author's 'E-commerce and the Airline Passenger' (2001) 66 JALC 1345.

[7] *Transvalue, Inc v KLM Royal Dutch Airlines* 539 F Supp 2d 1366 (SD Fla, 2008), 32 Avi 16,161.

4 Branch offices and agencies

[438] Where a carrier has a branch office through which the contract is made, it is immaterial that as a result of the carrier's administrative arrangements the office has no final authority to approve the contract and must refer the matter to another office. This is especially the case where these arrangements are unknown to the passenger or consignor[1], but it is submitted that the same result would follow were the details to be known.

The English courts have not pronounced on this aspect of the Convention rules[2]. The questions most closely analogous to those raised by this provision are questions as to the presence or residence of a company in a country, when it had an agency transacting business in the country in question. The extensive authorities were reviewed by the Court of Appeal in *Adams v Cape Industries plc*[3] where an elaborate statement of the position was presented. The Court held that an English court would be likely to treat a trading corporation incorporated under the law of one country as present within the jurisdiction of the courts of another country only if either (i) it had established and maintained at its own expense (whether as owner or lessee) a fixed place of business of its own in the other country and for more than a minimal period of time had carried on its own business at or from such premises by its servants or agents (a 'branch office' case), or (ii) a representative of the corporation had for more than a minimal period of time been carrying on *the overseas corporation's*[4] business in the other country at or from some fixed place of business.

Adopting a similar approach, the English courts might well reach the same result as was reached in New York in *Berner v United Airlines Inc*[5], where a ticket was bought from the office of BOAC in New York, that corporation having been appointed general sales agent for another airline in an agreement which went beyond the usual interline sales agency terms; the other airline was held to have a place of business in New York. The German Bundesgerichtshof reached a similar decision in a case in which a Bulgarian airline had a sales organisation in Germany which depended upon close cooperation with Lufthansa[6].

It is submitted however that the English courts would not follow the decision of the United States Court of Appeals for the Second Circuit in *Eck v United Arab Airlines Inc*[7]. The defendant airline had offices in New York and Los Angeles. The plaintiff purchased a ticket from an office of Scandinavian Airlines System in California for a journey, for one leg of which UAA was the carrier; the booking was not passed through the UAA branch offices in the United States but directly to Cairo. The Court, expressly adopting an approach

to the problem of interpretation which rejected 'the tyranny of literalness', held that United States courts had jurisdiction where the carrier had a place of business in the country and permitted its tickets to be sold in that country by an agent. It is submitted that the English courts would not import agency concepts in this way; the translation of the Warsaw Convention used in the United Kingdom legislation seems incapable of bearing the meaning attributed to the American text in *Eck v United Arab Airlines Inc*: the contract must be made 'by' one of the carrier's 'establishments'. On the other hand, it would not appear essential that the 'establishment' should be directly owned by the carrier, as is required in French decisions[8]. Such a strict rule could produce absurdities if the corporate structure of the carrier's undertaking placed operational and marketing functions in separate companies.

If agency concepts were used, would this be limited to cases of interline agreements, discussed but not relied on in *Eck*? Or would ordinary travel agents be included? Such an argument was rejected by a Paris court in *Orchestre Symphonique de Vienne v TWA*[9]. TWA had an office in Paris, and the tickets were bought in Paris, but through a travel agent who dealt directly with Swissair (carrier for another leg of the journey) in Geneva. It was held that the French courts had no jurisdiction. However, the reasoning is not clear from the judgment, which stresses the fact that the agency played no significant role in securing a meeting of minds between the plaintiffs and the defendant carrier. In *Qureshi v KLM Royal Dutch Airlines*[10] a Nova Scotia court, obiter, expressed the view that the use of a travel agency appointed to sell tickets on a commission basis would fall short of 'having an establishment'; a similar conclusion was reached in another French case in which, although the carrier had an office in Paris, the air waybill was issued through a freight forwarding company in circumstances which did not give that company the status of agent of the carrier[11]. The Italian Supreme Court held that a travel agent, an 'IATA agent', did not constitute an establishment so as to give the Italian courts jurisdiction in a claim against Air New Zealand[12]. In a cargo case, a French court has held that the mere issuing of an air waybill through the Paris office of a freight forwarder is insufficient to give jurisdiction to the French courts[13].

In the Dutch case of *Van der Kamp v Chinese Eastern Airlines*[14], the contract of carriage was concluded with the defendant airline's agents, Global Airlines Services, in the Netherlands. It was argued for the appellant consignor that it was sufficient that the establishment in question was 'a permanent third-party representative that acts under the instructions of the air carrier and subsequently can be considered as an established and recognisable part of the sales organisation of [the airline]'. The court held that the consignor had not proved that Global Airlines Services had that status. Without any close examination of the Convention text, the court held that an independent company with its own corporate personality, performing services for a range of airlines and using own general conditions did not qualify as an 'establishment'.

A quite different argument was advanced in *Kapar v Kuwait Airways Corpn*[15]. A passenger ticket was purchased in Sanaa, Yemen; the ticket was issued using Pan American ticket stock (although carriage was wholly by Kuwait Airways) and was confirmed electronically through the New York office of PAA. It was argued that this was sufficient to give New York courts jurisdiction, an argument clearly devoid of merit. An even bolder, and deservedly unsuccessful argument, raised in a case involving a ticket purchased in China, was based on

the use of an American Express card with a New York account[16]. In *Polanski v KLM Royal Dutch Airlines*[17], the court held that an electronic ticket purchased through a home computer is made either in the purchaser's home or at the airport at which he checks in. The court held that as both these places were in California and as the carrier had a place of business in the United States as its alliance partner Northwest did, the United States had jurisdiction. But the court gave no full examination of the requirement that the ticket be purchased *through* the relevant place of business.

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1 As in *Thai Airways International v Assurantie Maatschappij 'Nieuw-Rotterdam' NV* (Amsterdam CA, 11 January 1990), [1990] Uniform LR 257.

2 Magdalénat (Air Cargo, 119) says that a strict interpretation of this ground of jurisdiction was followed in *Rothmans of Pall Mall (Overseas) Ltd v Saudi Arabian Airlines Corpn* (1980) 1 S & B Av R VII/1, [1981] QB 368, [1980] 3 All ER 359, CA, but this ground was not relied upon in that case, and was plainly not available on the facts.

3 [1990] Ch 433, [1991] 1 All ER 929, CA. See *Okura & Co Ltd v Forsbacka Jernverks Aktiebolaget* [1914] 1 KB 715, CA; *Dunlop Pneumatic Tyre Co v Aotien-Motor und Motorfahr-zeugbau vorm Cudell & Co* [1902] 1 KB 342, CA; *Saccharin Corpn v Chemische Fabrik von Heyden Akt* [1911] 2 KB 516, CA; *Thames and Mersey Marine Insurance Co v Società di Navigazione a Vapore del Lloyd Austriaco* (1914) 111 LT 97, CA; *The Lalandia* [1933] P 56 (all cases on service of process in England); *Vogel v R and A Kohnstamm Ltd* [1973] QB 133, [1971] 2 All ER 1428 (residence in a foreign country).

4 Italicised in the judgment.

5 157 NYS 2d 884 (1956), 5 Avi 17,169; affd 170 NYS 2d 340 (1957). See also *McLoughlin v Commercial Airways (Pty) Ltd* (ED NY, 1985) (ticket for domestic South African flights bought through office of General Sales Agent in New York; but court does not properly address text of art 28).

6 23 March 1976, 1976 25 ZLW 255, [1976] Uniform LR 324. See also Bundesgerichtshof, 16 June 1982, (1982) RIW 910; Oberlandesgericht Hamburg (6 U 151/82) (18 November 1982), (1986) 11 Air L 100 (IATA agency). *Cf Vergara v Aeroflot Soviet Airlines* 390 F Supp 1266 (DC Neb, 1975), 13 Avi 17,866 (Aeroflot-Pan American cooperation); and a Swiss decision, Zurich (11 November 1983), 1984 33 ZLW 252 (airport agency sufficed); Landgericht Düsseldorf (35 O 180/3), 29 June 2004, (2004) 53 ZLW 666.

7 360 F 2d 804 (2nd Cir, 1966), 9 Avi 18,146. A similar view was taken in a Canadian case but leave to appeal was subsequently given on this and other points: *Dorman Estate v Korean Air Lines Co* (1995) 56 ACWS (3d) 6 (Ont Div Ct). Cf *Mascher v The Boeing Co* 13 Avi 18,047 (NY Sup Ct, 1975): presence of ticket office not itself sufficient to give jurisdiction. See *Summers v Ghana Airways Corpn* 94 ACWS 3d 1097 (Ont, 2000) for a Canadian disapproval of cases such as Eck.

8 *Herfroy v Cie Artop* (Paris CA, 2 March 1962), (1962) 16 RFDA 177; *Aérofret v Air Cargo Egypt* (Cour de Cass, 25 March 1986), (1987) 40 RFDA 544 (stressing also the fact that the operating company of the relevant establishment was a distinct and independent corporate entity); *Sté Transports Mory TNTE v Entreprise Ozilou* (Paris, 29 May 1989), (1989) 43 RFDA 266. See for the French view, Miller, Liability in International Air Transport (1977), p 304. Cf D Ravaud, 'La notion d'établissement au sens de l'art 28 de la convention de Varsovie' (1985) 39 RFDA 159; BJH Crans, 'Article 28 of the Warsaw Convention' (1987) 12 Air L 178 (arguing for a strict interpretation, emphasising that in the authentic French text the carrier must 'possède' the establishment).

9 IATA ACLR No 418 (1971), (1972) 35 RGAE 202. The existence of the IATA clearing house does not make IATA members agents for one another: *Stanford v Kuwait Airways Corpn* 648 F Supp 1158 (SD NY, 1986), 20 Avi 17,393.

10 (1979) 102 DLR (3d) 205 (NS SC). A similar view was taken in a case under the Indian consumer disputes legislation: *Malaysian Airlines System v Seghal* (Revision Petition No 2 of 2005, New Delhi). See also *Maijala v Pan American World Airways Inc* (Ontario, 20 April 1992) (ticket bought via American Express; presence of defendant's office in Toronto irrelevant).

11 *Cie d'Assurances Navigation et Transports v Cameroun Airlines* (Paris, 15 December 1989), (1989) 43 RFDA 555.

[12] *Reale-Mucelli v Air New Zealand* (Corte di Cass, 14 June 2006), noted G Guerreri (2008) 33 ASL 175.
[13] *Caisse Régionale d'Assurances Mutuelles Agricoles de Vannes v Sté Olympic Airways* (1988) 42 RFDA 212.
[14] Amsterdam CA, 8 May 2008, [2009] S & S 59.
[15] 663 F Supp 1065 (USDC, DC 1987), 20 Avi 18,421; affd 845 F 2d 1100 (DC Cir, 1988), 21 Avi 17,336 (this point not being made a ground of appeal), followed in *Stanford v Kuwait Airlines Corpn* 705 F Supp 142 (SD NY, 1989), 21 Avi 18,097.
[16] *Shen v Japan Airlines* 24 Avi 18,084 (SD NY, 1994).
[17] 378 F Supp 2d 1222 (SD Cal, 2005), 30 Avi 16,598; noted R Tillery, (2006) 71 JALC 91. As Tillery argues, it cannot be assumed that the computer used by an intending passenger to book a flight is located in the passenger's home: it may be in a public internet café or be a mobile device used anywhere in the world.

Place of destination

1 The Convention rule

[439] The fourth basis of jurisdiction applicable to actions for damages under the Conventions is that the court has jurisdiction at 'the place of destination'[1], a phrase also used in the definition of 'international carriage' in art 1(2)[2].

[1] Warsaw Convention 1929 (Carriage by Air Acts (Application of Provisions) Order 2004, SI 2004/1899, Sch 2), art 28(1); Warsaw-Hague text (Carriage by Air Act 1961, Sch 1), art 28(1); MP4 Convention (Carriage by Air Act 1961, Sch 1A as inserted by SI 1999/1312), art 28(1); Montreal Convention 1999 (Carriage by Air Act 1961, Sch 1B as inserted by SI 2002/263), art 33(1).
[2] See para VII[322].

2 The importance of the documentation

[440] In the usual case this will be the place of destination indicated in the contract of carriage, and on the passenger ticket in particular. So where a passenger bought a ticket in Kenya, intending to travel to New York, but was only able to purchase a ticket which specified London as the place of destination, the New York courts had no jurisdiction[1]. Conversely, if the passenger's journey is to terminate at point A, that will be the place of destination; that the aircraft is continuing to point B is immaterial[2].

If there is any ambiguity in the documentation, the courts will determine what is the true intention of the parties lying behind the words on the documents[3]; but if the documents are unambiguous the courts' usual stance is that they will not entertain an argument that one party really had a different destination in mind[4].

The almost chaotic variety of fares available on scheduled flights often gives rise to facts on which the issue presents itself. So in one of the cases arising out of the Korean Air Lines disaster of 1983, a passenger intended to travel New York-Seoul-Taipei-Hong Kong-New York; it was actually cheaper to buy a ticket including Montreal-New York and New York-Montreal segments, which the passenger would never use. But this was not known to the airline, and in the absence of clear evidence of a mutual intent differing from that which appeared on the face of the ticket the court would not look behind the documentation[5]. In one of the cases arising out of the Warsaw disaster of 1987, it was argued that as two passengers with Warsaw-New York-Warsaw return

tickets intended to remain in New York, that was their 'destination'. The Court of Appeals for the Second Circuit rejected this argument; the ticket was unambiguous[6]. A similar approach has been used in other Circuits[7].

1 *McCarthy v East African Airways* 13 Avi 17,385 (DC NY, 1975). See to the same effect in a cargo context *Duff v Varig Airlines Inc SA* 542 NE 2d 69 (Ill App, 1989), 22 Avi 17,367; *De Surmont et Fils v Valcke et Cie* (Douai CA, 4 January 1969), (1969) 23 RFDA 191.

2 *Compania Mexicana de Aviacion SA v US District Court for the Central District of California* 859 F 2d 1354 (9th Cir, 1988), 21 Avi 17,770.

3 See *Cie Air France v Libérator* (Paris CA, 8 December 1973), (1974) 28 RFDA 287; affd (Cour de Cass, 16 April 1975), (1975) 29 RFDA 293 (ticket indicated 'Paris Orly', ie, both name of city and of its airport, which lay in a different judicial district).

4 *Solanki v Kuwait Airways* 20 Avi 18,150 (SD NY, 1987) (passenger purchased return ticket Bombay-New York-Bombay; claim that he intended never to make return journey but to obtain cash refund immaterial; Bombay held place of destination). See *Najjar v Cie Swissair* (Bobigny, 27 October 1987), (1987) 41 RFDA 323, where the destination stated on the ticket was treated as conclusive; the facts suggest that the plaintiffs in fact intended to terminate their journey at an intermediate stop. In *Baah v Virgin Atlantic Airways Ltd* 473 F Supp 2d 591 (SD NY, 2007), 31 Avi 18,536, it was asserted that the passenger's intention as to whether to fly the return leg was not definite; this was immaterial; see G N Tompkins Jr, 'The Montreal Convention and the Meaning of 'Destination' in Article 33(1)' (2007) 32 ASL 224.

5 *Re Korean Air Lines Disaster of September 1, 1983* 664 F Supp 1478 (USDC, DC 1986), 20 Avi 18,535. See also *Re Air Crash of Aviateca Flight 901 near San Salvador, El Salvador on August 9, 1995* 29 F Supp 2d 1333 (SD Fla, 1997), 26 Avi 15,152 (use of fare identifiers on ticket not material; use of two tickets to obtain lower fare, but issued at same time, on same stock; treated as one round trip) (on fare identifiers, see to same effect, *Lam v Aeroflot Russian International Airlines* 999 F Supp 728 (SD NY, 1998), 26 Avi 15,584 (note 2 to judgment)).

6 *Klos v Polskie Linie Lotnicze* 26 Avi 15,215 (2nd Cir, 1997) where agreement between the parties 'a paradigm of clarity', applied in *Singh v Tarom Romanian Air Transport* 88 F Supp 2d 62 (ED NY, 2000), 27 Avi 17,670.

7 *Swaminathan v Swiss Air Transport Co Ltd* 962 F 2d 387 (5th Cir, 1992), 23 Avi 18,392; *Sopcak v Northern Mountain Helicopter Service* 52 F 3d 817 (9th Cir, 1995). See J D McIntyre, 'Where are you going? Destination, Jurisdiction, and the Warsaw Convention: Does Passenger Intent Enter the Analysis?' (1995) 60 JALC 756 (concluding that evaluating passenger intent would be contrary to the clear purposes of the Convention).

3 Return or round trips

[441] In the case of return ticket or round trip regarded from the outset as a single operation the place of departure will also be the place of destination[1]. Two decisions of District Courts in California have taken a different view: in the case of a ticket for flights Montreal-Los Angeles and open return, Los Angeles was held the place of destination[2], and in a later case involving a series of flights Jeddah-Santa Barbara-Jeddah (with intermediate stops) it was declared, on a 'common sense' interpretation of art 28(1), that 'at least two places of destination exist' in the case of a round trip[3]. In the text of the convention 'place of destination' is used in the singular and the weight of United States authority (including more recent District Court decisions in California and Texas[4]) favours the view that the single place of destination in such a case is the place of departure[5,6]. The position is not affected by the circumstance that the flight number, time and date of the return trip are left open[7].

The case law under the Warsaw Convention on this point is equally applicable where the Montreal Convention 1999 governs[8].

Many of the cases involve successive carriage; the place of destination is always the ultimate destination, provided that the parties have regarded the successive carriage as a single operation[9]. It may however be otherwise if a change of itinerary involves a flight regarded by the parties as a separate enterprise[10]

1 *Qureshi v KLM Royal Dutch Airlines* (1979) 102 DLR (3d) 205 (round trip to and from Sydney, NSW; injury on Amsterdam-Karachi leg; argument that Karachi 'place of destination' rejected, following *Grein v Imperial Airways Ltd* [1937] 1 KB 50, [1936] 2 All ER 1258); German Bundesgerichtshof, 23 March 1976, 1976 25 ZLW 255, 11 Eur Tr L 873; *Fernandez v Cie Varig* (Paris, 28 April 1978), (1979) 33 RFDA 80 (round-the-world ticket from Rio de Janeiro; death on flight Rio-Paris; Rio not Paris 'place of destination'); *Podjob v Cie Inex Avio Promet* (Ajaccio, 12 September 1988), (1989) 43 RFDA 142, [1990] Uniform LR 411 (day excursion Ljublana-Ajaccio-Ljublana; Ajaccio not 'place of destination'); *Brinkerhoff Maritime Drilling Corpn v PT Airfast Services Indonesia* (1992) 2 S & B Av R VII/125, [1992] Uniform LR 302 (Singapore CA, 1992) (citing this paragraph); *Cortes v Delta Air Lines Inc* 638 So 2d 108 (Fla App 1994), 24 Avi 18,137; *Osborne v British Airways plc* 198 F Supp 2d 901 (SD Tex, 2002), 28 Avi 16,325; *Ong v Malaysian Airline System Bhd* (HK DC, 2007, unreported, 5 July 200(HK DC, 2007, unreported, 5 July 2007)7) (where the court rejected an argument that an accident at the end of an out-going flight, leading to the passenger not making the return journey, converted that stopping-place into the place of destination); *Maranga v Abdulmutallab* 903 F Supp 2d 270 (SD NY, 2012) 35 Avi 17,982; 35 Avi 18,586 (SD NY, 2013)(return trip Accra – Amsterdam – Detroit - New York – Accra); *Gulf Air Co GSC v Fattouh* [2008] NSWCA 225, (2008) 251 ALR 183 (MP4 Convention case). For the destination for limitations purposes of a piece of baggage, see para VII[444].

2 *Aanestad v Air Canada Inc* 390 F Supp 1165 (DC Cal, 1975), 13 Avi 17,515. *Aanested* has been described as 'simply out of step with virtually all other courts addressing the destination issue': *Re Air Crash of Aviateca Flight 901 near San Salvador, El Salvador on August 9, 1995* 29 F Supp 2d 1333 (SD Fla, 1997), 26 Avi 15,152.

3 *Hurley v KLM Royal Dutch Airlines* 562 F Supp 260 (CD Cal, 1983), 18 Avi 17, 151 following *Aanestad* and expressly declining to follow the earlier cases cited in note 14. The judgment was later vacated by the trial judge.

4 *Re Air Crash Disaster at Covington, Kentucky, of June 2, 1983* (CD Cal, 1984) (no jurisdiction under art 28; round-trip began and ended in Canada); *Lee v China Airlines Ltd* 669 F Supp 979 (CD Cal, 1987), 21 Avi 17,129 (similar decision; Hong Kong place of departure and destination); *ESA v Olympic Airways* 24 Avi 18,102 (CD Cal, 1994) (round trip Riyadh-Los Angeles-Riyadh; no jurisdiction as Los Angeles not place of destination); *Mougouie v Air France* 24 Avi 18,197 (CD Cal, 1994) (Lyon-Los Angeles-Lyon; Los Angeles not place of destination); *Bartolomeu v China Airlines* 27 Avi 18,484 (ND Cal, 2001) (flight Portugal-London-Hong Kong-Portugal; only place of destination Portugal); *Flores v Philippine Airlines* 35 Avi 17,979 (CD Cal, 2012) (round trip Manila – Los Angeles – Manila: Los Angeles not place of destination)); *Flores v Philippine Airlines* 35 Avi 17,979 (CD Cal, 2012) (round trip Manila – Los Angeles – Manila: Los Angeles not place of destination); *Razi v Qatar Airways QCSC* 36 Avi 15,501 (SD Tex, 2014) (round trip Karachi – Doha – Houston – Doha - Karachi; no jurisdiction as Houston not place of destination).

5 *Butz v British Airways* 421 F Supp 127 (ED Pa, 1976), 14 Avi 17,452; affd 566 F 2d 1168 (3rd Cir, 1977); *Rinck v Deutsche Lufthansa* 395 NYS 2d 7 (AD, 1977), 14 Avi 17,858; *Martin v Air Jamaica* 15 Avi 17,230 (NY Sup Ct, 1978); *Gayda v LOT Polish Airlines* 702 F 2d 424 (2nd Cir, 1983), 17 Avi 18,142 (flights Poland-New York-Poland; plaintiff conceded that New York not place of destination); *Sabharwal v Kuwait Airways Corpn* 18 Avi 18,380 (ED NY, 1984) (New Delhi place of destination in round trip New Delhi-New York via Kuwait); *Re Korean Air Lines Disaster of September 1, 1983* 19 Avi 17,579 (USD C DC, 1985); *Solanki v Kuwait Airways* 20 Avi 18,150 (SD NY, 1987); *Martin v Trinidad & Tobago (BWIA International) Airways Corpn* 21 Avi 17,497 (SD Fla, 1988); *Campbell v Air Jamaica Ltd* 863 F 2d 1 (2nd Cir, 1988), 21 Avi 17,755; 891 F Supp 2d 1338; *Steber v British Caledonian Airways Ltd* 549 So 2d 986 (Ala Civ App, 1989), 22 Avi 17,211; *Malik v Butta* 24 Avi 17,736 (SD NY, 1993).

6 *Re Air Crash Disaster at Malaga, Spain on September 13, 1982* 577 F Supp 1013 (ED NY, 1984), 18 Avi 17,591, affd sub nom *Petrire v Spantax SA* (1985) 1 S & B Av R VII/161, 756

F 2d 263 (2nd Cir, 1985), 19 Avi 17,170, cert den 474 US 846 (1985), where the appellant did not challenge the proposition stated in the text but argued that there were two separate contracts each with its own place of destination.

7 *Swaminathan v Swiss Air Transport Co Ltd* 962 F 2d 387 (5th Cir, 1992), 23 Avi 18,392; *Okaneme v British Airways* 26 Avi 16,495 (DC Mass, 1999). To the contrary is a surprising decision of the French Cour de Cassation, refusing to disturb a decision of a lower court that, where the ticket was for flights Bogata-Paris-Bogata, but the return leg was open for six months, Paris was the place of destination of the first leg: *Avianca v Duque* (Cour de Cass, 15 July 1999).

8 *Baah v Virgin Atlantic Airways Ltd* 473 F Supp 2d 591 (SD NY, 2007), 31 Avi 18,536 (see G N Tompkins Jr, 'The Montreal Convention and the Meaning of 'Destination' in Article 33(1)' (2007) 32 ASL 224); *Jones v US 3000 Airlines* 33 Avi 17,442 (ED Mo, 2009).

9 *Vergara v Aeroflot Soviet Airlines* 390 F Supp 1266 (DC Neb, 1975), 13 Avi 17,866; *Re Alleged Food Poisoning Incident, March 1984, Abdulrahman Al-Zamil v British Airways Inc* 770 F 2d 3 (2nd Cir, 1985), 19 Avi 17,646 (flights Riyadh-Dharhan-London-Washington-New York-Riyadh; defendants carriers for London-Washington leg; two booklets used in 'conjunction ticket'); *Gasca v Empresa de Transporte Aero del Peru* 992 F Supp 1377 (SD Fla, 1998), 26 Avi 15,454 ('side-trip' Chile-Peru on separate ticket, but on facts held part of business trip beginning and ending in Miami); *Coyle v PT Garuda Indonesia* 180 F Supp 2d 1160 (DC Or, 2001), 28 Avi 15,487 (similar arguments), but this case was criticised in *Santleben v Continental Airlines Inc* 178 F Supp 2d 752 (SD Tex, 2001), 28 Avi 16,017. See also *Sopcak v Northern Mountain Helicopter Services* 52 F 3d 817 (9th Cir, 1995) (fixed-wing aircraft flight to Wrangell, Alaska; onward helicopter flight to Vancouver, BC; Vancouver place of destination); *Sopcak v Northern Mountain Helicopter Services* 924 P 2d 1006 (Alaska, 1996), 25 Avi 17,723 (same case in State courts); *Aviateca SA v Friedman* 678 So 2d 387 (Fla App, 1996), 25 Avi 17,416 (*Sopcak* followed); *Re Air Crash of Aviateca Flight 901 near San Salvador, El Salvador on August 9, 1995* 29 F Supp 2d 1333 (SD Fla, 1997), 26 Avi 15,152 (cited in n 7 above); *Lam v Aeroflot Russian International Airlines* 999 F Supp 728 (SD NY, 1998), 26 Avi 15,584. Cf *Khan v Deutsche Lufthansa AG* 27 Avi 18,149 (SD NY, 2000), as to which see para VII[341].

10 *Parkinson v Canadian Pacific Airlines* 10 Avi 17,967 (DC NY, 1969).

The fifth ground under the Montreal Convention

[441.1] Article 33 of the Montreal Convention adds a further ground for jurisdiction, giving jurisdiction in respect of damage resulting from the death or injury of a passenger, to a court in the territory of a State Party in which at the time of the accident the passenger had his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

The introduction of this 'fifth jurisdiction' was opposed at the Diplomatic Conference by many delegations, led by France, 53 African states and the Arab Civil Aviation Commission[1]. The principal arguments were advanced by the French and US delegates. The French delegate argued that such a jurisdiction was not really necessary to protect passengers; that its use would have unfortunate consequences for the development of international air transport; and that granting it would create a regrettable precedent in the development of contemporary law. He averred that the fifth jurisdiction would lead to the situation where nationals of high Compensation States would systematically bring claims against air carriers in their respective States, as would foreign citizens who were not excluded by legal means such as the principle of *forum non conveniens*. The principal proponent of the fifth jurisdiction was the United States. Its delegate said that he failed to understand the opposition to the proposed creation of the fifth jurisdiction. The United States felt strongly about this issue regardless of the number of cases