

Summary of arguments for Caldwell vs Easyjet

Matter of Jurisdiction of the Edinburgh Sherrif Court

1. Easyjet T&C's state non-exclusive jurisdiction
2. Deny that Montreal Convention limits us to Court in London
 - a. Place of Destination = Edinburgh
 1. Easyjet's document "Shawcross & Beaumont"
 - Section 440 – courts will decide the parties' true intentions
 - Section 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
 - the place of destination is always the ultimate destination, provided that the parties have regarded the successive carriage as a single operation.
 2. EC 261/2004 definition of "final destination"
 3. Butz vs British Airways – "ultimate destination"
 - b. Place of business through which the ticket was bought
Morningside Travel
Butz vs British Airways – place of business
3. Deny that the Montreal Convention is exclusive
 - a. Evidence of European Regulation EC261/2004 – overlaid/additonal
 - b. CJA Schedule 8, F3(f) – agency, branch
 - c. CJA Schedule 8, F4(3) – courts of where the consumer is domiciled
 - d. Schedule 8, F4(2) – This rule covers transport bought as package
4. Appeal to Court not to place a barrier of travel to London in order to access justice with "Scotland's Largest Airline".
5. Assert that we were "denied boarding" according to EC261/2004

1.

Article 29b of the Easyjet T&C's states that " *'Non-exclusive jurisdiction' means that You may bring a claim against easyJet in a jurisdiction outside of the courts of England and Wales*"

So, their own T&C's seem to give us the right to make a claim in Scotland.

2.a.

1. We deny that the Montreal Convention limits the scope of our redress to the location of the head office of Easyjet in Luton. The Montreal Convention (Article 33) states that an action for damages must be brought, *at the option of the plaintiff,...or where (the carrier) has a place of business through which the contract has been made, or before the court at the place of destination.*

Firstly, I argue that the "place of destination" was Edinburgh. As shown by Kennedy's evidence submission, we were booked to travel from Catania to Gatwick, then Gatwick to Edinburgh as part of a package tour from Edinburgh to Sicily. The Montreal Convention does not define "place of destination" but common sense would tell me that my destination on my return journey to Edinburgh, was Edinburgh. At the start of my journey that day, I would have said that my "destination" was Edinburgh - not Gatwick. Gatwick was not my "destination", merely a temporary stop in the journey which comprised two legs. We did not even leave the airport, and continued on another Easyjet flight booked at the same time.

Indeed, this view is supported by "Shawcross & Beaumont"

- Section 440 – courts will decide the parties' true intentions.... Intention to return to Edinburgh
- Section 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
- Many of the case 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.

2. European Regulation 261/2004 Article 2(h) defines "final destination" as *"in the case of directly connecting flights, the destination of the last flight"*.

Our flights were directly connecting in Gatwick. Hence, Edinburgh was

our "final destination" according to EC261/2004. I would hold that this is the established meaning of "destination".

3. Butz vs British Airways, Page 4

Although the authorities which addressed this precise issue are not extensive, both the cases and the commentators are almost unanimous in concluding that the "place of destination" referred to in the Warsaw Convention "in a trip consisting of several parts . . . is the *ultimate destination* that is accorded treaty jurisdiction". *Vergara v.*

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It is my conclusion that there is only one place of destination for Warsaw Convention purposes which in this case was London. I cannot accept plaintiff's contention that each place where a particular flight terminated is a "place of destination" since the application of the convention would vary with each segment of the entire journey. This, of course, would defeat a major goal of the High Contracting Parties for there would be no uniformity with respect to a single ticket.

2b.

We deny that the Montreal Convention limits the scope of our redress to the location of the head office of Easyjet in Luton. The Montreal Convention (Article 33) states that an action for damages must be brought, *at the option of the plaintiff, ... or where (the carrier) has a place of business through which the contract has been made, or before the court at the place of destination.*

I argue that in Edinburgh *the carrier has a place of business through which the contract has been made.* Easyjet state that we purchased the flights over the internet. The Montreal Convention was written before the extensive use of Internet booking so should be interpreted in this light. These days, most of Easyjet's sales are made in the home of the passenger, because Easyjet present their proposition and conduct the transaction at the computer in the passenger's home, so Easyjet has a place of business in every passenger's own home. Essential elements of any business transaction are the offer for sale, the conclusion of the bargain and the payment transaction. In case that the flight was bought in an Easyjet office, it would be said that the payment transaction occurred in Easyjet's office. In case that the flight was bought in my home, the payment transaction occurred in my home. Hence, the carrier has a "place of business" wherever an Internet device is used to conduct their business.

In fact, the flight was bought at the travel agent Morningside Travel on Morningside Road, who act as Easyjet's agents. To deny that Morningside Travel is a place of business of Easyjet, is to claim that no

business of Easyjet is conducted there. But essential elements of Easyjet's core business transaction (offer, agreement, payment) were conducted there. If not there, then where?

This view is also supported by "Butz vs British Airways"...

The Warsaw Convention provides four places of jurisdiction over foreign carriers in damage claims: where the carrier has his domicile, where the carrier has his principal place of business, where the carrier has a place of business through which the contract has been made, that is, where the *130 ticket was purchased, and the place of destination.^[5]

Given that Easyjet is Scotland's largest airline (see Scotsman Article, Doc 7) and flies 5.4 million passengers each year, and that it conducts its business mainly either through the Internet or via high-street agents, are we to say that "Easyjet does not have a place of business in Scotland through which its contracts are made"?

Are we to say that the only contracts which the courts in Scotland have jurisdiction are those small minority which are conducted at Easyjet's sales counters in their airports? While the majority contracts which are made via an Agent, or via the Internet, must be resolved only in Luton? Are we to say that a resident of Lerwick, who was denied boarding for a flight from Paris to Gatwick and hence missed his connecting flight to Lerwick, has no recourse in law other than to travel the length of the country to Luton, which is likely to be required on multiple occasions - a journey which is longer than that of the flight in question and will likely cost more?

This seems to not adequately to protect the consumer interests of Scots, and to form an impediment to gaining redress which unfairly advantages the airline

3.

a.

The Montreal Convention is not exclusive, but is a backstop minimum for all signatory countries. This fact was established by the decision of the European court that individual jurisdictions may have a higher level of protection. Indeed, the admittance by the defendant of the validity of European Regulation 261/2004, which provides additional protection in Europe, shows that the defendant accepts that the Montreal Convention is not limiting but may be overlaid with additional protection in some jurisdictions.

So, similarly consumer protection law in Scotland is additional to the rights conferred by the Convention.

Consumer protection law which covers this case is the CJA 1982

b.

CJA Schedule 8, F3(f)

...a person may also be sued:

(f) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;

We purchased the flights as part of a package from an agency, acting to conduct business on behalf of Easyjet. According to this law, we have the right to resort to the courts of the place in which the agency is situated (Edinburgh)

c.

CJA Schedule 8, F4(3)

A consumer may bring proceedings against the other party to a contract only in—

(a) the courts for the place in which that party is domiciled;

(b) the courts for the place in which he is himself domiciled; or

(c) any court having jurisdiction by virtue of rule 2(f) or (i).

The purchasers are domiciled in Edinburgh, and are therefore entitled to bring proceedings in Edinburgh

d.

Schedule 8, F4(2)

(2) This rule shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

We purchased a package consisting of both travel and accommodation from Morningside Travel, acting as agent for Easyjet. So, this rule does apply.

4.

A company claiming to be "Scotland's largest airline" should not seek to deny Scottish justice to their customers, placing in front of them the artificial hurdle of a trip to London before they can claim. Easyjet have hundreds of employees in Scotland, and retain Kennedy's local solicitors, who seem competent. Easyjet would not be disadvantaged were this case to be considered in Edinburgh, but the persuers would be profoundly disadvantaged due to the cost of travel, loss of earning for travel, and accomodation during proceedings in London.

This matter of jurisdiction has been a distracxtion from the main matter. The Edibnburgh Court of Session is perfectly competent to adjudicate upon.

There is ample legal support, and also moral authority, for my claim to pursue this matter in Edinburgh, the home of Scotland's Largest Airline.

5. (if time permits)

I argue that we were denied boarding according to European Regulation 261/2004.

According to 2(j), "denied boarding" means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there is reasonable grounds to deny them boarding such as .. health, safety or security, or inadequate travel documentation.

Court of Justice Press Release 125/12 makes clear the decision Rodriguez vs Iberia means that the concept of "denied boarding" is not limited to overbooking, but also to those concerning other grounds, such as operational reasons.

According to European Regulation 261/2004 Article 3(2a), our obligation was to present ourselves for check-in not later than 45 minutes before the published departure time. We were there 2 hours before as evidenced by our car hire receipt. We waited in a queue to check in our bags for 1 hour, which is unreasonable, and Easyjet staff refuses to prioritise us despite our request. We faced another 1 hour queue through security, a service provided by agents on behalf of Easyjet by Catania Airport, and were told be security staff that they could not prioritise us unless requested by Easyjet; Easyjet refused to request this of their agent. Finally we reached the gate to be told that the flight had departed.

We followed every procedure stipulated in Easyjet T&Cs, warned Easyjet staff about our concerns and were finally denied boarding by Easyjet staff after a delay completely outside our control, due to negligence of Easyjet and their agents.