

Legal and Regulatory Issues of Aviation

Travel Agencies and Travel Law

Dr. Till Vogel

Agenda for this Modul

Saturday, 2022/09/17

- Institutions and Authorities
- Traffic Rights
- Access to Airports
- Compliance

Sunday, 2022/09/25

- Safety & Security
- Liability & Consumer Protection
- Air Traffic Control - ATC
- Travel Agencies

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Useful books

- *Diederiksen-Verschoor/Mendes de Leon*,
An introduction to Air Law, 10th edition, 2017
- *Havel/Sanchez*,
The Principles and Practice of International Aviation
Law, 2014
- Paul Stephen Dempsey, Ram Jakhu
Routledge Handbook of Public Aviation Law, 2017
- Milde, Michael,
International Air Law and ICAO - Third edition - 2016
- *Schaefer, Christoph*,
Recht des Luftverkehrs, 2017

Part VIII

Travel Agencies and Travel Law

Introduction

What is the task of traveling?

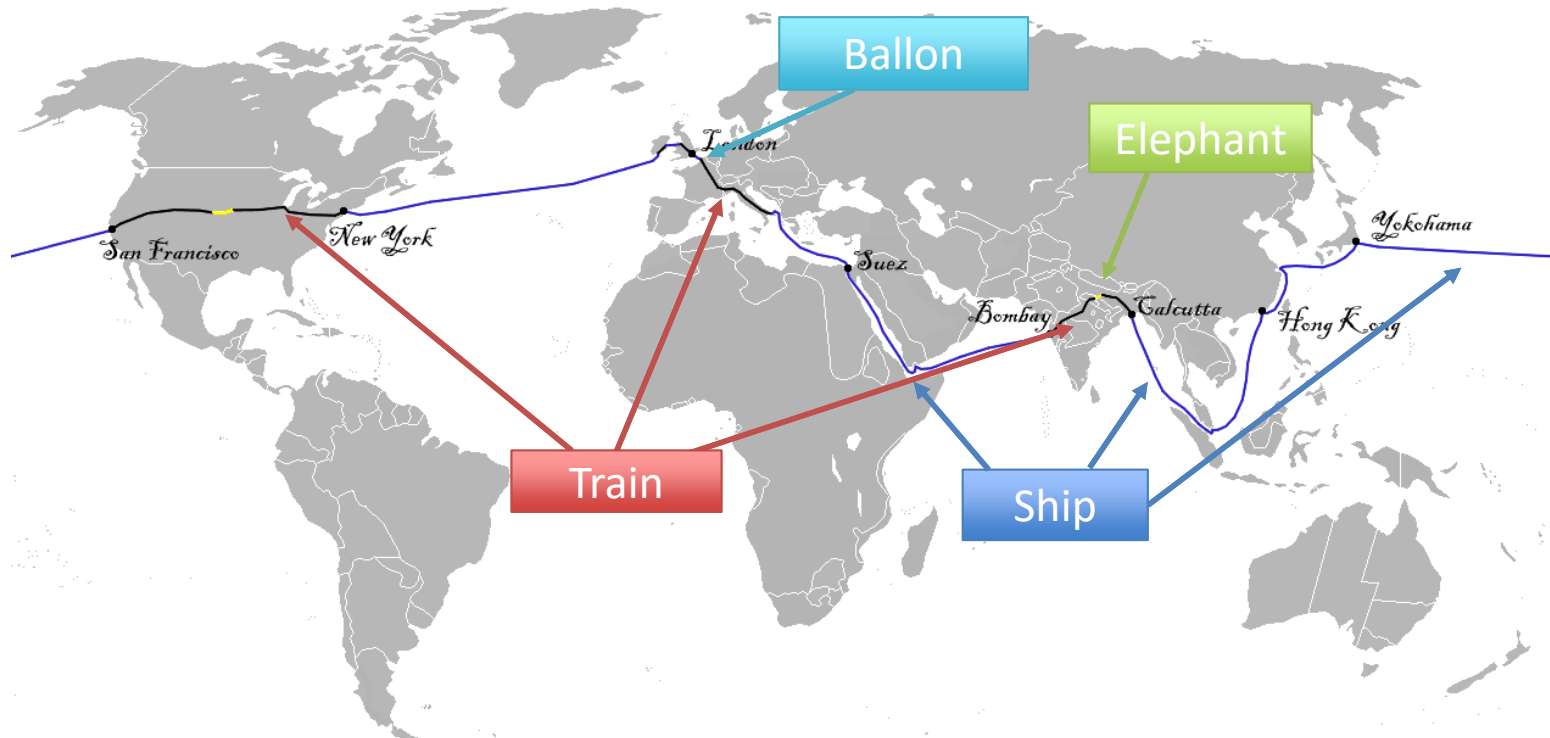
A Case Study:



Around the World in Eighty Days by Jules Verne (1873)

Introduction

What is the task of traveling?



Around the World in Eighty Days by Jules Verne

Introduction

What is the issue with traveling?

- Intermodal transportation
 - Train
 - Plane
 - Ship
 - Car (tolls & fees, etc.)
 - Bus/subway/taxi
 - Accommodation
 - Fragmentation of the service providers
- Visa restrictions and permit requirements

Introduction

What is the issue with traveling? (2)

- Language difficulties
- Cultural difficulties
 - Safety
 - Punctuality / timeliness
(Sundays/Sabbat/Bank holidays, New Year/Christmas, etc.)
 - Kindness
 - Food
- Souveraniry of States / Different legal frameworks



Introduction

What is the solution for traveling? (1)

- Diligent planning and contracting
 - Requires obtaining information on
 - Routings and schedules
(try: Oberursel to Ankara by train!)
 - Payment procedures (try: payments to North Korea)
 - Knowledge on requirements for
confirmations/cancellation/rebooking
 - Visa restrictions and permit requirements

Introduction

What is the solution for traveling? (2)

- Diligent planning and contracting
 - may not help with
 - Culture
 - Safety
 - Punctuality / timeliness
 - Kindness
 - Food
 - Language difficulties
 - Souveraniry of States / Different legal frameworks

Introduction

What is the solution for traveling? (3)

- Contracting individual travel service provider
- Contracting a package travel with one provider
- Contracting a professional travel agency
 - Linked travel arrangements
 - Separate travel services

The Legal Framework (in Germany)

What is the legal framework for a travel service?

- Under German law the legal rules for agreements about works and services apply
- For train travel special rules apply with regard to delays/denied boarding/cancellation, etc.
 - [Regulation \(EC\) No 1371/2007](#) of the European Parliament and of the Council of 23 October 2007 on **rail passengers' rights and obligations**
- For travel by plane special rules apply with regard to delays/denied boarding/cancellation, etc.
 - [Regulation 261/2004](#) establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

The Legal Framework (in the EU)

What applies for a combination of travel services?

- Flight, rental car and hotel?
- Train, flight, lodge?

In Europe (EU):

[Directive \(EU\) 2015/2302](#) of the European Parliament and of the Council of 25 November 2015 on **package travel** and **linked travel arrangements**

The Legal Framework (in the EU)

What applies for packages and linked travel arrangements?

- Under the law of EU member states the legal rules are set in the package travel directive [\(EU\) 2015/2302](#), unless (Art. 2 Sec. 2)
 - the arrangement covers a period of less than 24 hours and without overnight accommodation,
 - provider facilitates only occasionally and on a not-for-profit basis and only to a limited group of travelers (e.g. schools),
 - arrangements are purchased on the basis of a general agreement for the arrangement of business travel

The Package Travel Directive

To what applies the package travel directive?

- “**package**” means (Art. 3 Sec.2) a combination of at least two different types of travel services for the purpose of the same trip or holiday, if:
 - (a) those services are combined by one trader, before a single contract on all services is concluded; or
 - (b) those services are:
 - (i) purchased from a single point of sale and those services have been selected before the traveller agrees to pay (e.g. website!),
 - (ii) offered, sold or charged at an inclusive or total price,
 - (iii) advertised or sold under the term ‘package’ or under a similar term,
 - (iv) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services, or
 - (v) purchased from separate traders through linked online booking processes where the traveller's name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders and a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

The Package Travel Directive

To what applies the package travel directive?

- **“travel service”** means: (Art. 3 Sec. 1)
 - carriage of passengers;
 - accommodation which is not intrinsically part of carriage of passengers (night train) and not for residential purposes;
 - rental of cars, other motor vehicles or motorcycles
 - any other tourist service not intrinsically part of a travel service within the meaning of points above
 - e.g. rental of equipment (e.g. ski), tickets for concerts, wellness treatments, visits, tours on site
 - not: transfer pick-up service from a hotel, etc.

The Package Travel Directive

- For package travels, the organizer
 - is responsible for the performance of the travel services
 - has to provide certain upfront-information to the traveller before the conclusion of the contract
 - has to provide security against its insolvency and insolvency of the travel service providers

The Package Travel Directive

For package travels the organiser is responsible for the performance of all the travel services included in the package:

- If any of the travel services are not performed in accordance with the package travel contract, the organiser shall (Art. 13 Sec. 3) remedy the lack of conformity
- If the organiser does not remedy the lack of conformity within a reasonable period set by the traveller, the traveller may do so himself and request reimbursement of the necessary expense

The Package Travel Directive

- The organiser shall offer, at no extra cost to the traveller, suitable alternative arrangements of equivalent or higher quality, for the continuation of the package, including where the traveller's return to the place of departure is not provided as agreed
- Where the proposed alternative arrangements result in lower quality than the organiser shall grant the traveller an appropriate price reduction.

The Package Travel Directive

- The traveller may terminate the package travel contract and request price reduction and/or compensation for damages, if organiser has failed to remedy it within a reasonable period set by the traveler (Art. 13 Sec. 6).
- In case of termination the organizer has to take care of the repatriation of the traveller.
- The organiser shall bear the cost of necessary accommodation, for up to three nights per traveller, as long as it is impossible to ensure the traveller's return because of unavoidable and extraordinary circumstances.

The Package Travel Directive

- The traveller is entitled to an appropriate price reduction for any period during which there was lack of conformity, unless the organiser proves that the lack of conformity is attributable to the traveller!
 - This changes the burden of proof to the organizer!
- The traveller shall be entitled to receive appropriate compensation from the organiser for any damage which the traveller sustains as a result of any lack of conformity. Compensation shall be made without undue delay

The Package Travel Directive

- The “organizer” means a trader who combines and sells or offers for sale packages, either directly or through another trader or the trader who transmits the traveller's data to another trader in an online booking process!
- Also agencies can be an “organizer” in the meaning of the directive!
- The traveller can be a private person or a business person

The Package Travel Directive

- Other obligations of the “organizer”
 - The organiser gives appropriate assistance without undue delay to the traveller in difficulty by:
 - (a) providing appropriate information on health services, local authorities and consular assistance; and
 - (b) assisting the traveller to make distance communications and helping the traveller to find alternative travel arrangements.

The Package Travel Directive

- Other obligations of the “organizer”
 - The organiser has to provide security for the refund of all payments made by the travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency.
 - If the carriage of passengers is included in the package travel contract, organisers shall also provide security for the travellers' repatriation.
 - Agencies facilitating linked travel arrangements shall provide security for the refund of all payments they receive from travellers insofar as a travel service, which is part of a linked travel arrangement, is not performed as a consequence of their insolvency.

The Package Travel Directive

What applies under the package travel directive?

- **“Linked travel arrangement”** means (Art. 3 Sec. 5) at least two different types of travel services purchased for the purpose of the same trip or holiday, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader facilitates:
 - (a) on the occasion of a single visit or contact with his point of sale, the separate selection and separate payment of each travel service by travellers; or
 - (b) in a targeted manner, the procurement of at least one additional travel service from another trader where a contract with such other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

Where not more than one type of travel service as referred to in point (a), (b) or (c) of point 1 and one or more tourist services as referred to in point (d) of point 1 are purchased, they do not constitute a linked travel arrangement if the latter services do not account for a significant proportion of the combined value of the services and are not advertised as, and do not otherwise represent, an essential feature of the trip or holiday.

The Package Travel Directive

- Other obligations of the “organizer”
 - The agency established in a Member State shall be subject to the obligations laid down for organisers in Chapters IV (performance of the package) and V (insolvency protection), if the organiser of the package is established outside the European Economic Area, unless the retailer provides evidence that the organiser complies with those Chapters.