

Recent Scholarship on Article 5 of the Rome I Regulation

Yehya Badr, Associate Professor at the Alexandria University, Egypt, published an article “A Cure From Rome for Montreal’s Illness: Article 5 of the Rome I Regulation and Filling the Void in the 1999 Montreal Convention’s Regulation of Carrier’s Liability for Personal Injury”, in (2018) 83 JOURNAL OF AIR LAW AND COMMERCE 83. The abstract reads:

“An examination of the 1999 Montreal Convention shows that the drafters did not intend to lay down a comprehensive treaty that would organize a carrier’s liability for personal injury to passengers. They opted to achieve a certain level of uniformity through enacting a set of rules that tackled several key issues such as the grounds for a carrier’s liability, the available defenses, and the limits on the recoverable damages. Consequently, some unaddressed issues created a void in the Montreal Convention and were then left without a clear remedy. In this article, a distinction is made between two types of voids: first, the definitional void describes the lack of definition for several key terms used in the Montreal Convention, such as “accident” and “carrier.” Second, the regulatory void describes the lack of rules to address issues such as determining the effect of a passenger’s contributory negligence as a defense for liability and the right of action. This article demonstrates that national courts have resorted either to the forum’s law or the forum’s choice-of-law rules to fill the void in the Montreal Convention. As a result, international uniformity of results cannot be achieved nor is there any predictability. This article recommends the adoption of Article 5 of the Rome I Regulation as a solution to this problem. Doing so would give both parties the freedom to choose a law from a predetermined list, and fill the above mentioned voids, while providing alternative choice-of-law rules if the parties decided not to choose a law to govern their contract for air carriage.”

The full text can be downloaded [here](#).