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## Book Review: Aviation Law: Cases and Materials

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AVIATION LAW: CASES AND MATERIALS by Robert M. Jarvis, James T. Crouse, James R. Fox & Gregory W. Walden. Durham, NC: Carolina Academic Press, 2006. Pp. VII/947. USD 110.00. ISBN: 159460-030-9.

AVIATION LAW: CASES AND MATERIALS – TEACHER’S MANUAL by Robert M. Jarvis, James T. Crouse, James R. Fox & Gregory W. Walden. Durham, NC: Carolina Academic Press, 2006. Pp. III/90. N.P.

*S.V. (Steve) Dedmon\**

**T**O CLARIFY my position from the beginning—this is a great book.<sup>1</sup> It includes a seven-page table of contents, a five-page table of cases, 676 pages of text and notes, followed by thirty appendices (259 pages), and a five-page index. A ninety-page Teacher’s Manual supplements the case book and provides users with insight into the selection and editing of cases, and the authors’ opinions regarding the emphasis of the law and the courts’ legal conclusions. Regarding those conclusions, Jarvis, Crouse, Fox, and Walden (hereinafter, “the authors”) take definite positions with which I found myself at times agreeing, and at other times disagreeing. I never felt, however, that the authors intended to imply that their positions were the final authority on any matter. The Teacher’s Manual concisely summarized the various topics and helped clarify some of the

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<sup>1</sup> To avoid the appearance of impropriety I must disclose that Robert M. Jarvis was my faculty advisor as a 1L while attending Nova Southeastern University in 1995. I remember our initial meeting over a pizza lunch, during which he solicited comments concerning our law school experience up to that point. I do not remember my answer, but I believe it included some disdain for the law school educational process and probably the professors. Additionally, his wife was a guest lecturer for an international business class I took during the summer of my first year in conjunction with a study abroad program hosted by the law school.

issues which were lost in the editing process, and in some cases supplied additional background information. Additionally, the Manual provides two methods for teaching the material as guidance to those who may be new to the subject or teach as adjunct professors.

Due to the relative “newness” of aviation law and the text on the subject, and I use that term generally, more often than not, the authors use current cases to introduce a particular subject or make a specific point. The cases used throughout the entire book, including cases from various levels of the state and federal court system, are self-explanatory regarding the salient points of law they wish to convey. As a result, the courts’ decisions are the latest and best interpretations of the law, and therefore, are relevant to students and practitioners alike. The United States Supreme Court’s included opinions, true to their familiar nature and practice, review chronologically and historically the evolution of the law and define the law with final conclusions. By including the Court’s opinions, the authors help the student take the guesswork out of determining how the Court came to its particular conclusion. The result is a clear understanding of the law. I applaud the authors for getting to the point without the agony of the journey, although, I do understand the reason for the journey, as law texts by nature are written to revel in the law’s evolution, despite sometimes tending to cloud its finality.

Having said that, as matters take on new complexity, particularly as international issues become more prevalent, a need may arise for a succession of cases in order to give a more in-depth view of a particular subject area. If the authors should be so inclined, they could publish a supplement, but again, the “newness” of aviation law suggests that this area of the law has not progressed to that point. Additionally, it has been my experience that students consider supplements just another item in a book bag that will never see the light of day unless the professor assigns something from it directly or it is bound to the book. For those practicing law, however, it may be a welcome addition. As I stated above, the notes are a great resource for case law and if some of them were expanded and placed in a supplement, it would be worth the price of publication. The authors also provide the opportunity for extra research by citing additional references, but if those materials are not in front of them, very few students and professors will take the initiative and avail themselves of this information.

Beginning the review of the individual sections, the first thing to grab my attention was Chapter One's length, which doubles as the Introduction (105 pages). At first, I did not understand why it was so long, but I ultimately came to appreciate it. Only after stepping back from the text did I realize what the authors were attempting to accomplish. My revelation was confirmed when I received the Teacher's Manual and its overview of the authors' summary of the inception of flight and its history, sources of law regarding past and current aviation issues, and finally, the professional practice of aviation lawyers. Although my perceptions were not aligned point by point with the authors', I understood the gist of what the Introduction was attempting to convey.

For those unfamiliar with aviation, this textbook includes a good overview and historical perspective of the inception of flight. I have used Harry Lawrence's<sup>2</sup> and Robert M. Kane's<sup>3</sup> books to teach the history of aviation legislation and have found their historical findings and those of this text the same in some areas, different in others, but overall compatible. This section is chronologically organized and therefore, is easy and informative reading. The legislative section follows the same chronological format and acquaints the reader with both domestic acts and international conventions. The authors expand the scope of the section by introducing writings that address the need for regulation of ultralight aircraft,<sup>4</sup> an area of aviation possibly unfamiliar to many. The authors also use the tried and true "Notes Section" as supplemental material adding a wealth of general and specific information to the text without being burdensome.

The Introduction's case law portion begins by introducing liability issues associated with a pioneering balloonist and ends with cases related to the September 11, 2001 tragedy. For obvious reasons, this is the only section where the authors use cases which are "old." Throughout the remainder of the book, the cited cases reflect the most current decisions and provide references to relevant material being decided as the book was in the publisher's hands. The only distraction, that may amount to more of a personal preference, was the positioning of the Notes. They are at the end of each section and refer back to the cases

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<sup>2</sup> HARRY LAWRENCE, *AVIATION AND THE ROLE OF GOVERNMENT* (2004).

<sup>3</sup> ROBERT M. KANE, *AIR TRANSPORTATION* (14th ed., 2003).

<sup>4</sup> Richard H. Jack, *Ultralight Aircraft: A Need for Better Regulation Than 14 C.F.R. § 103*, 51 J. AIR L. & COM. 415 (1986).

which could be a dozen or more pages prior to the Notes section itself. For me, in too many instances I got bogged down in a case, moved on to another, and then forgot the legal issue that the Notes ultimately addressed. Thus, I would prefer to see the notes relating to a case placed immediately thereafter.

Chapter Two begins with a concise overview, as do all the chapters. The chapter itself (211 pages) discusses aircraft and is broken down into sections. Commencing with an article detailing the purchase and sale of aircraft, the first section articulates the degree of detail necessary in contract language to properly defend both parties involved in the agreement, and ends with properly registering an airplane and preventing clouds on a title using a search of the Federal Aviation Administration ("FAA") registry.<sup>5</sup> The chapter then discusses such topics as: FAA jurisdiction over airshows and experimental aircraft in *Ickes v. FAA*;<sup>6</sup> the intricacies of airplane registration, especially when foreign countries are involved as in *Air One Helicopters, Inc. v. FAA*;<sup>7</sup> and recordings in *Lewistown Propane Co. v. Ford*,<sup>8</sup> *Creston Aviation, Inc. v. Textron Financial Corp.*,<sup>9</sup> and *Koppie v. United States*.<sup>10</sup> The latter cases explore any liability the FAA may or may not have in registry issues. This section is also a review of property law issues. The problems at the end of each section are thought provoking and could be used as discussion material or as research outside of the classroom. The Teacher's Manual is a valuable aid, providing information specific to the problems for those who are not familiar with the issue and the cited case.

Section C deals with cases detailing state taxes on jet fuel and their relation to the Commerce Clause, the Federal Aviation Act, and international conventions. The arguments in *Wardair Canada, Inc. v. Florida Department of Revenue*<sup>11</sup> and *American Airlines, Inc. v. Johnson*<sup>12</sup> demonstrate the peculiarity of aviation issues due to the obvious mobility of airplanes and their use on an intra- and interstate basis. Section D discusses tort liability and involves manufactures' negligence, products, parts, and strict li-

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<sup>5</sup> Jeffrey S. Wieand, *Jet Way: How to Buy and Keep that Corporate Plane*, 6 Bus. L. TODAY 58, 60 (1997).

<sup>6</sup> *Ickes v. FAA*, 299 F.3d 260 (3d Cir. 2002).

<sup>7</sup> *Air One Helicopters, Inc. v. FAA*, 86 F.3d 880, 883 (9th Cir. 1996).

<sup>8</sup> *Lewistown Propane Co. v. Ford*, 42 P.3d 229, 231-32 (Mont. 2002).

<sup>9</sup> *Creston Aviation, Inc. v. Textron Fin. Corp.*, 900 So. 2d 727, 729-31 (Fla. Dist. Ct. App. 2005).

<sup>10</sup> *Koppie v. United States*, 1 F.3d 651, 653 (7th Cir. 1993).

<sup>11</sup> *Wardair Can., Inc. v. Fla. Dep't of Revenue*, 477 U.S. 1, 7-10 (1986).

<sup>12</sup> *Am. Airlines, Inc. v. Johnson*, 56 S.W.3d 502, 504-05 (Tenn. Ct. App. 2000).

ability. It is here that students should get a real sense for the vastness of liability, or opportunity, depending on one's perspective concerning liability faced by aircraft manufacturers and part suppliers. Section E discusses defenses to liability including some that may be new, and one that should be familiar. The new defenses include those provided by the Federal Aviation Act of 1958,<sup>13</sup> the General Aviation Revitalization Act of 1994,<sup>14</sup> the Government Contractor Defense,<sup>15</sup> and the Foreign Sovereign Immunities Act.<sup>16</sup> The tried and sometimes true "disclaimer defense" is the one with which students would probably be familiar. One of two other defenses the authors may wish to explore in the future is negligence per se from *McGee v. Cessna Aircraft Co.*<sup>17</sup> The other is the hurdle plaintiffs' lawyers face in Florida stemming from the 1999 Tort Reform Act,<sup>18</sup> and similar legislation passed in Texas in 2003<sup>19</sup> related to jury instructions, that constitute another take on the Government Contractor Defense.

The final section examines venue and choice of law issues that I believe will assist in putting practicality to legal concepts, which in law school seem to get compartmentalized in subjects like civil procedure or federal jurisdiction, even with the "extended treatment"<sup>20</sup> they may receive. The cases in this section highlight the manner in which courts deal with forum non conveniens and choice of laws that, as is the case in major aircraft disasters with multiple victims, a major point of contention among litigants.

Chapter Three, broadly titled "Airmen," covers pilots, mechanics, and flight attendants. The authors also introduce the Railroad Labor Act ("RLA"),<sup>21</sup> bringing the chapter to a total of 125 pages. After the large number of issues and pages in

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<sup>13</sup> Federal Aviation Act of 1958, 49 U.S.C. §§ 1301-1542 (1958) (current version at 49 U.S.C. § 40102 (2000)).

<sup>14</sup> General Aviation Revitalization Act of 1994, Pub. L. No. 103-298, 108 Stat. 1552, § 2(a) (1994).

<sup>15</sup> See *Boyle v. United Techs. Corp.*, 487 U.S. 500, 512 (1988) (commonly referred to as the Boyles Defense).

<sup>16</sup> Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-1611 (2000).

<sup>17</sup> 139 Cal. App. 3d 179, 186-87 (Ct. App. 1983).

<sup>18</sup> FLA. STAT. ANN. § 768.1256 (West 2005). For further explanation and discussion see Daniel D. Barks' text, Products Liability and Tort Reform as presented at the winter meeting of the Lawyer-Pilots Bar Association, February 2006.

<sup>19</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 82.008 (Vernon 2006).

<sup>20</sup> ROBERT M. JARVIS, JAMES T. CROUSE, JAMES R. FOX, & GREGORY W. WALDEN, *AVIATION LAW: CASES AND MATERIALS, TEACHER'S MANUAL* 26 (2006).

<sup>21</sup> Railroad Labor Act, 45 U.S.C. §§ 151-188 (2000).

Chapter Two, this chapter is easier reading. It is also easier to understand since the subjects are actually people we relate to when flying, and includes recognizable commercial aviation activities. The issues relating to pilots are numerous and include pilot responsibilities for injuries resulting from turbulence, intoxication, owner's vicarious liability, assumption of the risk, and basic airmanship. However, I felt the *Coleman* case was out of place and more applicable to Chapter Two. Note Two of this section left out the National Transportation Safety Board's ("NTSB") appellate role that affords a party believing an error has been made by a NTSB administrative law judge an opportunity to appeal,<sup>22</sup> after which either party could appeal to the United States Court of Appeals.<sup>23</sup> The cases involving flight attendants include employment discrimination and specifics related to weight, age, race, religion, and sexual harassment. The collective bargaining section discusses mechanics and includes analysis of the RLA. In the future, I would like to see the RLA analysis expanded upon, as it has historical and legal ramifications, and continues to be major legislation under which airline mergers and buyouts are governed.<sup>24</sup> I also suggest the book at least mention the Administrative Procedures Act, as it is foundational to enacting Federal Air Regulations.

Chapter Four covers passengers in 143 pages. This chapter is also easy reading because most people have experience in this area. Here, the authors differentiate between domestic and international passengers—for good reason, since the laws are so diverse. The eight cases included cover ticket pricing, privacy, bumping of passengers from flights, irate passengers, passengers who face possible discrimination, baggage recovery, and recovery for physical injuries. Although this is a simple overview of the chapter, the cases are significant and give an adequate synopsis of situations which students have either read about or have been involved in, thereby helping reinforce the learning objectives. As noted above, the chapter also introduces additional federal laws that refer specifically to international flights and of which few students understand the ramifications or remedies, thereby helping them see beyond the cause of action. One area upon which the authors may wish to speculate in the

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<sup>22</sup> 49 C.F.R. § 821.47(a) (2006); *see also* 49 C.F.R. § 821.2 (2006).

<sup>23</sup> 49 C.F.R. § 821.64. (2006); *see also* 49 U.S.C. §§ 1153, 46110 (2000).

<sup>24</sup> *See Air Line Pilots Ass'n Int'l v. E. Air Lines, Inc.*, 703 F. Supp. 962, 963-64 (D.C. 1988). The Florida Bar also lists this case as suggested reading in preparation for becoming Board Certified in Aviation Law.

future is the First and Fourth Amendment rights associated with biomedical scanning of passengers on international flights and their ultimate ramifications on health and national security issues. The problem at the end of this section always sparks a spirited conversation in class as I relate what the courts have concluded constitutes an accident under the Warsaw Convention.<sup>25</sup>

Chapter Five, titled “Cargo,” comprises 67 pages. The chapter is subdivided into Suits Against Carriers, (subdivided into Fair Opportunity, Notice, and Damages) and Suits Against Third Parties. The cases cover lost watercolor paintings, dead baby chickens, and the disappearance of paintings from a warehouse. Here, students will see that fine print and the detail therein are a vital part of the legal profession. Part of the case information overlaps, such as the issue of notice, as a byproduct of the emphasis the authors have chosen. The cases under Notice are self-explanatory. Likewise, the Damages section is clear and contains a refresher of foreseeability as discussed in that venerable English chestnut case, *Hadley v. Baxendale*.<sup>26</sup> The last major subdivision is entitled Suits Against Third Parties and is a bit tedious. However, at the risk of sounding redundant, the focal point of the cases are not the only important aspect, as the collateral topics are equally important. Understanding their importance may have been the point of having to read all of those cases in law school, but it took writing a book review for me to finally learn this. It is still tedious, but depending on how one structures their instruction, these cases can be consolidated to stem the dreariness.

Chapter Six gets us out of the airplane and plants us firmly at the Airport in 129 pages. Here the authors’ overview sums it up best. The chapter is broken down into airport construction, use, security, and air traffic control. The section on construction brings us back to eminent domain and revisits *United States v. Causby*.<sup>27</sup> It then addresses federal funding, environmental concerns, and ultimately reverts back to eminent domain and condemnation by giving us an example of how courts look at and determine valuation. Airport use and the effects on a city due to noise, traffic congestion, and direct and indirect user fees are

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<sup>25</sup> *Wallace v. Korean Air*, 214 F.3d 293, 300 (2d Cir. 2000), *cert. denied*, 531 U.S. 1144 (2001).

<sup>26</sup> *Hadley v. Baxendale*, (1854) 156 Eng. Rep. 145 (H.V.).

<sup>27</sup> *United States v. Causby*, 328 U.S. 256 (1946).



the focus of the next section. It provides an informative overview of the complexity and diversity of local governments' concerns regarding aviation related matters. A couple of the cases in this section discuss equal protection and the Commerce Clause as related to air commerce, which I believe will practically reinforce students' understanding in these areas. The Air Traffic Control ("ATC") portion of this section begins by looking at age discrimination and mandatory retirement, and touches historically on Professional Air Traffic Controllers. The cases, *Abrisch v. United States*<sup>28</sup> and *Lakomy v. United States*,<sup>29</sup> look at air traffic controllers and their liability when the traffic they are handling is involved in accidents. Perhaps a new concept for some students, these cases emphasize that under the Federal Torts Claim Act ("FTCA"), the federal government is actually the defendant because of the acts of the controllers who are the government's agents. Due to the significance of the FTCA, I would suggest an in-depth look at its specifics so that students can see the specificity and the circumstances under which the federal government can be named a party. There is one final subsection dealing with concessionaires. Although this subsection is informative, it seems unnecessary. I understand that the authors wished to leave no topic unexplored when dealing with issues associated specifically with the operation of airports and generally to aviation law; however, this subsection adds substantively little to either area.

As a base aviation law text, this book is rock solid. The authors have taken a fresh and systematic approach to address legal issues faced by those practicing and teaching aviation law. I believe they have done it well and I commend them for their efforts. Nonetheless, some academics and practicing lawyers may believe the book includes too much or too little material in certain areas, or does not include their favorite case as related to a subject matter. However, this book gives students a broad overview of aviation law without being overly burdensome by in-

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<sup>28</sup> *Abrisch v. United States*, 359 F. Supp. 2d 1214 (M.D. Fla. 2004). For me, *Abrisch* was more than just another case in a case law book. I read it with mixed emotions since I knew the non-flying attorney who was killed. He was a member of the church I attended and was actively involved in the singles ministry where I was a leader. The attorneys who represented his estate were personal friends and I also knew the firm who represented one of the other deceased's estates. My emotions were mixed because, like the authors, I believed the percentage of liability afforded the government was too high.

<sup>29</sup> *Lakomy v. United States*, 70 Fed. Appx. 199 (5th Cir. 2003).

jecting aviation reality, practicality, and humor along the way. I would be negligent if I failed to mention that each chapter begins with the comic strip *Sherman's Lagoon* and that the text makes several references to episodes of *Seinfeld*. Aviation is a fast paced, invigorating, adrenalin-filled, and sometimes frightening environment—and not just for those of us who fly! This book takes those characteristics and attempts to convey them to those who want to be involved as legal professionals.

For those teaching aviation law in a full-time or adjunct capacity, I *highly* recommend you consider this text as the basis for your course. I believe that you and your students would benefit from its instructional value and insightful commentary. It is also a great source of reference material and would be a welcome addition to one's legal library.



INTERNATIONAL AIRCRAFT FINANCING by Donald H. Bunker.  
Montreal-Geneva: International Air Transport Association, 2005

Constance O'Keefe\*

**A**CTING ON its mission to serve the industry, the International Air Transport Association ("IATA") has published this two volume guide to aircraft financing. The author, Donald H. Bunker, is an aviation finance expert who has practiced law in both Dubai and Canada and has taught many classes for airline professionals at IATA's training institute. He has now put his wealth of knowledge down in writing.

*International Aircraft Financing* is an ambitious compendium designed to give "airline management, financial institutions, responsible governmental entities, manufacturers and others . . . insight into the financial conduct and administration of one of the most unique and important industries in the world."<sup>1</sup> This book lives up to its stated purpose, and will be useful to all of these parties.

Bunker's book is a Baedeker of this crucial topic for aviation professionals and provides the *complete* story on international aircraft financing. In one of its charmingly quirky passages, Bunker informs his readers that the earliest record of equipment leasing dates from circa 2010 B.C., when the Sumerian priests/administrators leased agricultural tools to farmers.

This book, however, is far from whimsical. Despite occasional infelicitous phrasings and extraneous opinions, it is solid and detailed. *International Aircraft Financing* provides a thorough approach to the topic overall and an in-depth review of each of its many aspects. Bunker states that the "three major assets of any carrier are its aircraft fleet, its routes and its human resources."<sup>2</sup> This book provides important tools for those who have profes-

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<sup>1</sup> DONALD H. BUNKER, *INTERNATIONAL AIRCRAFT FINANCING* XXV (1st ed. 2005).

<sup>2</sup> *Id.* at 125.

sional aircraft financing responsibilities; it will help them ensure that the best fleets possible are put in place.

The book begins with the basic building blocks of aviation, explaining the types of operators, from "legacy" scheduled international carriers to general aviation, fixed based operators, fractional owners, and military operators. It goes on to describe the types, classes and categories of equipment, providing details on aircraft, engines, and other major items such as traffic alert and collision avoidance systems, flight data recorders, and cockpit voice recorders. Bunker also describes the various complex systems (such as electrical and hydraulic), within each aircraft. Finally, he discusses airline personnel (flight crew, cabin crew, and ground staff), explains their roles, and describes their training. This chapter gives the reader a complete understanding of what it is all about: what international aircraft financing deals support.

Bunker then moves to the commercial aspects of international aircraft finance. This section starts with the basics of commercial organizations, and describes corporations, cooperatives, special purpose entities, joint ventures and partnerships before moving on to the basics of financing for each.

The heart of the first volume—the longest and most comprehensive part of the text—is the chapter on fleet and financial planning. Bunker describes how airlines decide what aircraft to buy and what goes into decisions concerning disposal of aircraft. He provides a primer on the criteria for aircraft selection, including details on weight, payload, range, wind impact, spares, and so forth. The useful section on financial planning extends for more than 200 pages. It describes the various types of debt, how capital markets work, the various mechanisms of aircraft financing, and the all-important taxation, risk management, and governmental export support mechanisms, along with the practicalities of negotiation and dealing with brokers. Throughout this section, Bunker provides practical information regarding the functioning of each of these aspects of financial planning in multiple jurisdictions, with great attention paid to the United States, Canada, the United Kingdom, Germany, Japan, France, and Ireland.

Building on these basics of financing, Bunker goes on to describe "the imaginative but complicated structures of the last thirty years," explaining the various leases, often with helpful

charts and step-by-step numbered explanations.<sup>3</sup> He discusses capital and operating leases and typical United States leveraged leases, as well as the more esoteric (and, in some cases, superseded) variations such as “Pickle leases,” foreign sales corporation leases, German and Japanese leveraged and operating leases (including *Samurai* and *Shogun* leases), French and British tax leases, wet leases, chartering, sales and leasebacks, synthetic leases, and Irish leases.

The next section of the book deals with the legal technicalities of ownership, title, and security. It notes the differences in common and civil law jurisdictions, and includes information regarding the new Capetown Convention regime. Bunker also discusses what he calls “special requirements,” and offers the reader an informative summary of insurance basics (including war risk), maintenance and regulatory issues (including operational, registration, codesharing, alliances and slot allocation standards), safety issues (including bogus parts), public policy issues (for example, the environment), corruption, and liability issues (including navigational charges, immigration, and drug smuggling issues).

Bunker concludes the first volume with a discussion of international air law. He provides details on the applicable treaties (Chicago, Warsaw, Montreal, and Capetown), the relevant organizations (ICAO, IATA, and so forth), and the bilateral agreements that continue to define most traffic rights worldwide.

One of the most (of many) helpful aspects of this publication is the wealth of information and detail in the more than 500 pages of sample agreements included in the second volume. Bunker informs his readers that “[t]he financing of a single aircraft can involve as many as two hundred documents,” and goes on to kindly assist and instruct those faced with such a daunting prospect with the precise tools required, providing a wide array of sample documentation and language for specific clauses.<sup>4</sup> The second volume also includes a glossary defining numerous terms, thereby allowing readers to enlighten themselves on matters as diverse as FAS 13, SLV, and Triple-Dip Leases.

Information on purchasing *International Aircraft Financing* is available on the IATA website at <http://www.iata.org>.

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<sup>3</sup> *Id.* at 178.

<sup>4</sup> 2 DONALD H. BUNKER, *INTERNATIONAL AIRCRAFT FINANCING* 1 (2005).

