

Krispy Legal's NEWSLETTER



LEGAL FRAMEWORK FOR AIRCRAFT LEASING AND FINANCING IN NIGERIA

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LEGAL FRAMEWORK FOR AIRCRAFT LEASING AND FINANCING IN NIGERIA

BACKGROUND

Recent developments in Nigeria's aviation sector reflect a renewed emphasis on aircraft leasing and financing as a core growth strategy. Air Peace has secured new aircraft through lease arrangements, including dry lease transactions involving Boeing aircraft, developments that were widely reported as rare for Nigerian airlines in recent years. In a related development, Air Peace's successful conclusion of one of the first dry lease arrangements by a Nigerian carrier in almost a decade was described by industry commentators as a milestone capable of reshaping perceptions about leasing risk in Nigeria. Alongside these airline driven developments, the Federal Government has announced plans to establish a national aircraft leasing company to support domestic operators and reduce dependence on foreign intermediaries. Government officials have also publicly stated Nigeria's intention to increase participation in the global aircraft dry leasing market, acknowledging its strategic importance to sustainable aviation growth. Complementing these efforts, the Presidency and the Ministry of Aviation have actively sought foreign capital for the aviation sector, characterising it as under exploited but investment ready. Taken together, these developments underscore a period of heightened activity and policy focus on aircraft leasing and financing in Nigeria, signalling a deliberate shift in how the sector is being positioned locally and internationally.

INTRODUCTION

Aircraft are extremely valuable mobile assets. Their financing and leasing combine aviation law, secured transactions, foreign-exchange and banking regulation, taxation and international treaties such as the Cape Town Convention (Aircraft Protocol). In Nigeria the regulatory baseline is the Civil Aviation Act, 2022 and the Nigeria Civil Aviation Authority (NCAA) regime. Nigeria has ratified and domesticated the Cape Town Convention and in recent years the Federal High Court issued Practice Directions to give effect to the Convention's remedies moves intended to make Nigeria a more predictable jurisdiction for lessors and financiers. In addition, domestic rules on

registration of interests, tax treatment, foreign-exchange (CBN) constraints and courts' receptivity to repossession/recognition of foreign orders remain pivotal.¹

Aircraft leasing and asset-backed financing reduce the capital barrier to acquiring aircraft. Lessors and financiers rely heavily on legal predictability: registration of interests (so their security is visible), enforceable remedies (repossession, remedies in insolvency) and certainty on taxation and foreign currency repatriation. Historically, weak enforcement and injunctive relief in Nigerian courts deterred some lessors; the Cape Town Convention domestication and subsequent judicial practice directions were intended to reverse that.² For airlines, the acquisition of commercial aircraft is often the most expensive investment decision to make.³ This is because oftentimes it requires external sources of funding. For this reason, airlines employ a variety innovative financing tools in acquiring aircrafts without draining their cash reserve.⁴

AIRCRAFT LEASE FINANCING

Apparently, purchasing of new production and service equipment or to expand their facilities is now costly and difficult for business owners. Rising costs and the inadequate depreciation policies of most government's tax program have combined to shrink the corporate capital reservoir, which in the past has supplied the funds for these purchases.⁵ To escape this capital squeeze, many corporations have begun to lease the equipment they formerly purchased outright. These companies now lease trucks, cars,

1 Civil Aviation Act, 2022, Law of the Federation of Nigeria. Available at: <https://ncaa.gov.ng/media/sxxn42yu/civil-aviation-act-2022-publication.pdf> accessed on 10 December, 2025.

2 ICLG Business Reports, Aviation Finance and Leasing: Nigeria (ICLG, 2025). Available at: <https://iclg.com/practice-areas/aviation-finance-and-leasing/nigeria> accessed 10 December 2025.

3 B. S. Kokpan, O. E. Paul, "Exploring the Legal Issues in Aircraft Lease Financing Option" (2022) International Law and Contemporary Issues. Vol 16, No. 1 J. Juris, 2022.

4 W. L. Zhang, "Risk Reduction and Response Mechanisms in Aviation, (2019) The Cambridge Handbook of Disaster Risk Reduction and International Law, Cambridge University Press. Available at: <https://doi.org/10.1017/97781108564540.018> accessed 10 December 2025.

5 B. S. Kokpan, O. E. Paul, "Exploring the Legal Issues in Aircraft Lease Financing Option" (2022) International Law and Contemporary Issues. Vol 16, No. 1 J. Juris, 2022.

buses, railroad cars, barges, airplanes, jet engines, machine tools and supermarket fixtures.⁶

Generally, lease financing is a contractual agreement between the owner of the asset who grants the other party the right to use the asset in return for a periodic payment and the other party who is the user of the assets.⁷ Under lease financing, the lessee is given the right to use the asset but ownership lies with the lessor. Subsequently, the lessor would retake possession, subject to an agreed renewal option.

The Nigerian Civil Aviation Regulation (NCAR) defined “Lease” to mean a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration usually rent.⁸ The Cape Town Convention defines a lease generally as an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment.⁹ It is simply a contract of hire by which, the owner of the asset-lessor grants the right of possession and use to the person requiring the asset-lessee for an agreed period of time and specific rent.¹⁰

Leasing is essentially a commercial arrangement whereby an equipment owner (lessor) conveys to the user (lessee) the right to use the equipment for payment of specified rentals over an agreed period of time (term) at the end of which, in the absence of provisions to the contrary in the lease agreement, the equipment must be returned to the

6 Charles W. Steadman, *Chattel Leasing - A Vehicle for Capital Expansion*, [1959]14 Bus. Law.

523.

7 M. Ikhtiar Alam, *Lease Financing: Types, Advantages and Disadvantages, and Example* at <https://www.researchgate.net/publication/3548647994>. accessed 10 December 2025.

8 The Nigerian Civil Aviation Regulation, 18.1.2.(76).

9 Convention on International Interests in Mobile Equipment, 2004.

10 R.O. Omosun, ‘Aircraft Financing Options’ [2000] (4)(4) Modern Practice Journal of Finance and

Investment Law, 222. See also Shaw and Beaumont on Air Law (4th ed.) 1990.

lessor or its nominee.¹¹ It is a contract of hire where under one party, the lessee obtains the use of an asset in return for the payment of rent to the owner of the asset, the lessor.¹²

According to Nithya¹³:

"A lease is a contract between a lessor and a lessee, where the actual or constructive possession of the assets owned by the lessor, along with the right to use such assets, is given to the lessee. The lessee is under an obligation to return the assets to the lessor and to deal with them in accordance with directions or terms of the lease contract. The contract is usually for a specified period of time - the "lease term" during which the lessee makes periodic payments of the "lease rentals" for the use of the asset. However, the lessee acquires no semblance of title to, or ownership of, the asset".

PRIMARY LEGAL INSTRUMENTS AND INSTITUTIONAL PLAYERS

1. DOMESTIC STATUTE LAW AND REGULATORS

a. CIVIL AVIATION ACT, 2022 (CAA 2022) - The Civil Aviation Act, 2022 (CAA 2022) is the principal domestic statute regulating civil aviation in Nigeria. The Act modernised the regulatory framework, consolidated prior rules, and includes express provisions on registration and recordation of interests in aircraft. Sectional provisions require the Nigeria Civil Aviation Authority to maintain an aircraft register and to record title and interests.¹⁴

b. NIGERIA CIVIL AVIATION AUTHORITY (NCAA) - Established and empowered by the CAA to regulate, approve and record aircraft registrations, and to accept or approve leasing arrangements (including dry and wet leases) in line with national

11 Donald H. Bunker, International Aircraft Financing Vol. 1 General Principles (1st edn, IATA 2005)

178.

12 S. Holloway, Aircraft Acquisition Finance and Airline Credit Analysis (Pitman, 1992) 140.

13 Nithya Narayanan, 'Unwinding the Vicious Loop of Aircraft Finance Leases' [2013] 13(1) Issues

Aviation L & Pol'y 58

14 Civil Aviation Act, 2022, Law of the Federation of Nigeria. Available at: <https://ncaa.gov.ng/media/sxxn42yu/civil-aviation-act-2022-publication.pdf> accessed on 10 December, 2025.

regulations and international obligations. The NCAA issues technical guidance on lease arrangements and prescribes requirements for leases to be submitted for approval in advance.¹⁵

c. THE FEDERAL HIGH COURT – Section 251 of the Constitution of the Federal Republic of Nigeria vests the the Federal High Court with exclusive jurisdiction over many aviation disputes¹⁶. Fundamental to this oversight is the **Judicial Practice Direction (2024) on the Cape Town Convention and Aircraft Protocol** which directs courts to take judicial notice of and enforce the Convention’s remedies. This Practice Direction is a major structural step to ensure lessors’ remedies are not frustrated by procedural obstacles (e.g., injunctive orders to block repossession).¹⁷

2. INTERNATIONAL FRAMEWORK.

The Cape Town Convention on International Interests in Mobile Equipment & Aircraft Protocol (CTC/Protocol) is one of the international framework guiding aviation in Nigeria. Nigeria is a signatory, party and has lodged subsequent declarations; the Cape Town framework standardizes recognition of security interests over aircraft and provides a global International Registry for interests in aircraft objects (engines, airframes) enabling priority and notice by registration. Domestication through CAA 2022 and recent practice directions gives the Convention domestic effect. The Convention’s remedies (direct enforceability, remedies in insolvency, priority rules and the International Registry) are central to modern aircraft financing.¹⁸

15 Nigeria Civil Aviation Authority (NCAA), Official Website and Regulatory Publications.

Available at: <https://www.ncaa.gov.ng> accessed 10 December 2025.

16 Section 251, Constitution of the Federal Republic of Nigeria 1999 (as amended).

17 Balogun-Harold, ‘Cape Town Convention Practice Directions: Implications for Aircraft Repossession in Nigeria’ (Blog Commentary, 2024). Available at: <https://balogunharold.com/blog/cape-town-convention-practice-directions> accessed 10 December, 2025.

18 UNIDROIT, Convention on International Interests in Mobile Equipment (Cape Town Convention) and Aircraft Protocol – States Parties. Available at: <https://www.unidroit.org/instruments/security-interests/cape-town-convention/states-parties/> accessed 10 December, 2025.

3. FINANCIAL REGULATORS AND TAX AUTHORITIES

The Central Bank of Nigeria (CBN) governs foreign exchange transactions and banks' lending practices. Guidance on FX repatriation, exchange controls and collateral (e.g., treatment of FX-denominated collateral for naira loans) affects aircraft financings, which are typically USD-denominated and involve cross-border payments and repatriation of lease rentals and sale proceeds.¹⁹ Recent CBN guidance and circulars on foreign exchange operations and banks' credit policies are relevant to structuring facilities and hedging arrangements.²⁰

Also, **Federal Inland Revenue Service (FIRS)** & State tax authorities helps tax treatment (value added tax on imported aircraft, stamp duties on leases and mortgages, customs duties, and incentives/exemptions) can materially affect transaction economics. The CAA 2022 contains some tax neutrality provisions (e.g., authority to impose fees and certain exemptions) but tax clearances and importation approvals remain essential practical steps.

FORMS OF AIRCRAFT FINANCING AND LEASING AVAILABLE IN NIGERIA

Aircraft financing uses many structures, selecting the appropriate model depends on risk allocation, balance-sheet considerations, tax, regulatory approvals and the parties' commercial objectives.

19 Reuters, 'Nigeria Bars Lenders from Using FX-Denominated Collateral for Naira Loans' (8 April 2024).

Available at: <https://www.reuters.com/business/finance/nigeria-bars-lenders-using-fx-denominated-collateral-naira-loans-2024-04-08/> accessed 10 December 2025.

20 Central Bank of Nigeria, Monetary, Credit, Foreign Trade and Exchange Guidelines 2022–2023 (CBN, 2022).

Available at: <https://www.cbn.gov.ng/Out/2022/MPD/Credit%20Guidelines%202022%20-2023%2020.05.2022.pdf>

<https://www.cbn.gov.ng/Out/2022/MPD/Credit%20Guidelines%202022%20-2023%2020.05.2022.pdf> accessed 10 December, 2025.

1. OPERATING LEASE

Conversely, a lease that does not meet the criteria of a finance lease or a capital lease is known as an operating lease or hiring contract.²¹ An operating lease provides for the lessee to receive the right to use an aircraft for a portion of its useful life. The term of an operating lease will typically vary between three to five years, after which the aircraft will be returned to the lessor and either leased again or sold.²² An operating lease has a duration that is shorter than the economic life of the asset; is not fully amortized, and does not include the transfer of any ownership right from the lessor to the lessee at the end of the leased term.²³ The airline does not record the aircraft as an asset or a liability on the balance sheet. Since the airline does not assume the risk of ownership under an operating lease, the aircraft is treated as an off balance sheet item.²⁴ The lessee in an operating lease seldom acquires title to the leased equipment at the end of or duration of the term although the transaction may include an option to purchase the equipment under certain circumstances.²⁵

2. FINANCE LEASE / CAPITAL LEASE

Finance Leasing or Capital Leasing of aircraft is a kind of leasing involving more complicated transaction, in which a lessor, often a special purpose company or partnership, purchases the aircraft through a combination of debt and equity financing, and then leases it to an airline operator.²⁶ It transfers substantially all of the risks and rewards of ownership of an aircraft to the lessee.²⁷

A finance/finance-type lease conveys substantially all the risks and rewards of ownership to the lessee whereas legal title may remain with the lessor. These arrangements are often economically equivalent to a purchase financed by the lessor

21 J. B. Daudu, *Ownership and Commencement of Airline Business in Nigeria-Synoptic Guide on*

Laws. Practice and Procedure, 2008.

22 Rod D. Margo, 'Aircraft Leasing: The Airline's Objectives [1996] 21 AIR & SPACE L. 166

23 (n-40) 76

24 *Ibid* 277.

25 (n-25) 183.

26 Nithya Narayanan, "Unwinding the Vicious Loop of Aircraft Finance Leases" (2013) 13 (1) Issues Aviation Industry (J. Ross Publishing 2012) 277.

27 S 15 Statement of Standard Accounting Practice (UK).

and can include balloon payments or transfer of title at end of term. These are structured to allow the financier lessor to claim the aircraft as an asset and create security over the asset where necessary. Domestic formalities include written lease documents and registration of interests with the NCAA and, where applicable, registration with the Cape Town international registry.²⁸

Generally, a finance lease is a long-term full payout lease pursuant to which the lessee acquires use of an aircraft for a substantial part of its useful life. Rent payments are structured so that the lessor recovers the cost of the aircraft, plus a return on investment, over the life of the lease. In a finance lease, the lessee rather than the lessor select the aircraft. The lessor purchases the aircraft from the supplier or from the lessee by way of a sale-leaseback; the lease is a triple net lease (i.e., the lessee is responsible for taxes, maintenance, and insurance); and title remains with the lessor throughout the lease term and does not pass to the lessee on expiration of the lease²⁹.

3. SALE-AND-LEASEBACK

An airline that owns aircraft can sell to an investor and lease it back freeing up capital while retaining operational use. Sale-and-leaseback can be combined with tax and accounting optimization but requires careful transfer documentation and clear recordation of the sale at the NCAA register to ensure subsequent priority. Financing banks and lessors typically require full documentation including security interests and guarantees.³⁰

A sale-leaseback, in its simplest form, involves an owner of property selling that property outright and simultaneously leasing it back from the purchaser, frequently with renewal or repurchase provisions.³¹ Under a sale and leaseback transaction, an airline,

28 S.S. Kohn & Co., Aviation Finance and Leasing in Nigeria (Practice Note, 2023).

Available at: <https://sskohn.com/wp-content/uploads/2023/06/2023-Aviation-Finance-Leasing-Nigeria.pdf> accessed 10 December 2025.

29 Rod D. Margo, 'Aspects of Insurance in Aviation Finance' [1996] 62 (2) J. AIR L. & COM. 423 at 426.

30 ICLG Business Reports, Aviation Finance and Leasing: Nigeria (ICLG, 2025).

Available at: <https://iclg.com/practice-areas/aviation-finance-and-leasing/nigeria> accessed 10 December 2025.

³¹ Appleway Leasing, Inc. v. Wilken, 39 Or. App. 43, 591 P.2d 382 (1979),

as owner of an aircraft, will sell its aircraft to a third party at an agreed-upon price, usually an aircraft-leasing company or a bank, and immediately undertake an agreement to lease that aircraft back on previously agreed-upon terms. The third-party purchaser then becomes the owner and lessor, while the airline that sold the aircraft becomes the lessee.³² This arrangement not only changes the airline's aircraft ownership structure, but also generates a cash inflow from the sale of the aircraft that can be used to pay debt associated with that aircraft. The result of a sale and leaseback transaction is that the airline continues to use the aircraft while generating cash from its sale.³³ Converting physical assets into liquid capital through sale and leaseback transactions tends to enhance a company's financial position and profitability. Sale and leaseback transaction can improve a company's current debt-to-equity ratios, and reduce depreciation expenses. Since the aircraft is never out of operation during this process, there is no revenue loss associated with an aircraft being out of the fleet.³⁴

4. ASSET-BACKED LOANS, MORTGAGE AND SECURITY INTERESTS

Traditional loans secured by an aircraft (mortgage or charge), assignments of lease receivables, pledges of export credit insurance, guarantees and assignment of revenue streams are common. Under Nigerian practice, transfers or interests must be in writing, stamped, and registered with the NCAA to be effective against third parties. The Cape Town Convention provides additional predictability for priority and remedies where it applies.³⁵

5. EXPORT CREDIT AGENCY (ECA) AND SUPPLIER FINANCING, AND BONDS

ECA-backed loans (e.g., from Export-Import agencies of aircraft-manufacturing states) provide attractive financing with long tenors. Structured products, securitisations

Jerome J. Kavulich, INCOME TAX—THREE-PARTY SALE-LEASEBACKS—True Leases or Financing Techniques? *Frank Lyon Co. v. United States*, 435 U.S. 561 (1978), [1979] 1 W. New Eng. L. Rev. 601

³² n-18) 79.

³³ (n-40) 281

³⁴ Ibid 282.

³⁵ Lexology, 'Creating and Registering Security Interests over Aircraft in Nigeria' (April 2024). Available at: <https://www.lexology.com/library/detail.aspx?g=c60797b3-4d1f-4890-bd25-0ec1155a0574> (https://www.lexology.com/library/detail.aspx?g=c60797b3-4d1f-4890-bd25-0ec1155a0574) accessed 10 December 2025.

(asset-backed securities) and commercial bonds have been used internationally but are less common in Nigeria due to market depth and FX issues. Nevertheless, ECA and international bank loans remain important sources of long-term aircraft finance.³⁶

6. ISLAMIC FINANCE (IJARA)

Shariah-compliant structures especially Ijara (lease) and Murabaha (cost-plus sale) are used where parties prefer non-interest financing. These structures can be adapted to aircraft (Ijara financing) and have been used in parts of Africa. Parties must carefully structure transfers and ensure compliance with both CBN guidelines (if banks are involved) and NCAA registration.³⁷

REGISTRATION, PRIORITY AND REMEDIES

1. Domestic registration — NCAA aircraft register

NCAA national aircraft register under CAA 2022 the NCAA is required to maintain the national civil aircraft register and record any title to, or interest in, any civil aircraft. Registration of transfers/leases and mortgages should be completed with the NCAA to ensure enforceability against third parties and to provide public notice. The NCAA's Aviation Safety Inspector Guide and related materials set out the procedures for recording leases and interests.

2. International Registry (Cape Town) and the Aircraft Protocol

Where the Cape Town Convention applies, parties may (and practically should) register their international interests (e.g., international interests, prospective accession) in the International Registry established under the Convention. Registration there establishes priority internationally and is often required by lessors and financiers as a condition precedent. The Convention also supplies a priority and insolvency regime, and direct

36 ICLG Business Reports, Aviation Finance and Leasing: Nigeria (ICLG, 2025).

Available at: <https://iclg.com/practice-areas/aviation-finance-and-leasing/nigeria> accessed 10 December 2025.

37 Central Bank of Nigeria, Monetary, Credit, Foreign Trade and Exchange Guidelines 2022–2023 (CBN, 2022).

Available at: <https://www.cbn.gov.ng/Out/2022/MPD/Credit%20Guidelines%202022%20-2023%2020.05.2022.pdf> accessed 10 December 2025.

remedies such as the power to take possession and sell an object in defined circumstances.³⁸

3. Priority and enforceability

Priority depends on timing and registration: a mortgage/interest registered in accordance with domestic law (and the International Registry where relevant) will generally take priority. The CAA 2022 and Court Practice Directions were intended to ensure Nigerian courts respect these priority rules and provide efficient remedies (including recognition of foreign orders when appropriate). Practicalities remain: lessors often require "clean" certificates from the NCAA, evidence of no liens, and full documentary compliance.

4. Remedies on default

Under the Cape Town Convention and domestic remedies, typical lessor/financier remedies include:

- a. Repossession / retaking possession (subject to local law);
- b. Sale and appointment of a receiver/manager;
- c. Direct enforcement of contractual rights and acceleration of sums due; and
- d. Remedies in insolvency (super-priority for certain claims).

The Federal High Court Practice Direction was designed to limit the use of injunctive relief that would frustrate the Convention's remedial framework, speed enforcement and improve predictability.³⁹

³⁸ UNIDROIT, Convention on International Interests in Mobile Equipment (Cape Town Convention) and Aircraft Protocol – States Parties. Available at: <https://www.unidroit.org/instruments/security-interests/cape-town-convention/states-parties/> accessed 10 December, 2025.

³⁹ UNIDROIT, Convention on International Interests in Mobile Equipment (Cape Town Convention) and Aircraft Protocol – States Parties. Available at: <https://www.unidroit.org/instruments/security-interests/cape-town-convention/states-parties/> accessed 10 December, 2025.

MATERIAL CLAUSES IN AIRCRAFT FINANCING AND LEASING CONTRACTS.

The following clauses are routinely regarded as material (i.e., they determine allocation of risk and are negotiated heavily). Each is discussed with its purpose and common drafting considerations:

1. Parties, legal capacity and corporate authority

Accurate identification of lessor, lessee and guarantors; corporate authorisations and good standing certificates; representation of corporate power to enter the agreement. For lessors, ensuring the lessor has good title and authority to lease the aircraft is fundamental. Failure here threatens entire security.⁴⁰

2. Description of the aircraft and documentation

- a. Complete aircraft details (manufacturer, serial no., registration mark), logbooks, airworthiness certificates, maintenance records.
- b. Delivery protocol: acceptance inspection, delivery certificate, delivery location and responsibility for ferry flights. Clear delivery evidence is needed for International Registry entries and for triggering obligations (e.g., insurance, maintenance).

3. Lease term, rentals and escalation

Term of lease, commencement and expiry dates; rent (currency usually USD), payment mechanics, escalation formula, late payment interest rates. Also, Currency / FX clause which are recitals ensuring rent is payable in hard currency and procedures for conversion or payment in local currency if FX restrictions exist, and remedies if repatriation is blocked. Given CBN controls and periodic FX policy changes, practicable fallback language is crucial.

4. Insurance and risk allocation

Hull and liability insurance concerned insured amounts, insured parties (lessor often must be loss payee), policies for war risk, hull all-risk, third party liabilities; evidence

⁴⁰ Lexology, 'Creating and Registering Security Interests over Aircraft in Nigeria' (April 2024). Available at: <https://www.lexology.com/library/detail.aspx?g=c60797b3-4d1f-4890-bd25-0ec1155a0574> accessed 10 December 2025.

and maintenance of insurance. Insurance clauses typically require lessor/lessee to maintain specified coverages and to notify of claims/impairments.⁴¹

5. Tax, customs and importation warranties

Warranties and covenants about tax treatment, payment of customs duties, import/export permits, and indemnities for adverse tax claims. Because stamp duty, VAT and customs clearance can be costly and disruptive, these clauses commonly allocate risk to the lessee/operator.⁴²

CONCLUSION

Nigeria's aviation financing environment has been substantially modernised by the Civil Aviation Act 2022, the domestication of the Cape Town Convention and the Federal High Court Practice Direction designed to operationalise Convention remedies domestically. These developments materially improve the legal predictability for lessors and financiers. Nonetheless, transactional success still depends on meticulous documentation (material clauses described above), strict compliance with NCAA registration rules, careful management of foreign-exchange constraints and proactive tax/customs planning. International financiers and lessors should continue to require robust registration (domestic and international), enforceable repo and insolvency remedies, and practical mitigants (insurance, escrow, guarantees) to address Nigeria-specific risks.

41 ICLG Business Reports, Aviation Finance and Leasing: Nigeria (ICLG, 2025)

42 Ibid.



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