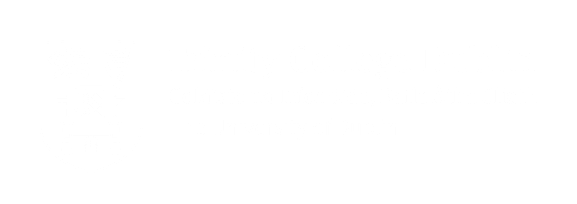


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| Symposium Report  *Past, Present, and Future of International Leasing of Personal Property* |
| Project Launch for the Transnational Commercial and Leasing Law Project |
| JANUARY 2025  Aviation Working Group acting through its Irish Contact Group: *A&L Goodbody, Arthur Cox, Mason Hayes Curran, Matheson, and McCann FitzGerald* in association with Trinity College Dublin |



# January 2025 Symposium Summary

**Attendees**

65\*\* in person, including the Nigerian Minister for Aviation and Aerospace Development, Mr. Festus Keyamo SAN; key stakeholders in the aviation financing and leasing industry; and 6 project student associates from Trinity College Dublin.

**Event Sponsors**

Aviation Working Group acting through its Irish Contact Group (A&L Goodbody, Arthur Cox, Mason Hayes Curran, Matheson, and McCann FitzGerald) in association with Trinity College Dublin.

**Key Topics**

The Past, Present, and Future of International Leasing of Personal Property, including discussions on the history, economic impact of leasing, liability, conflict of laws and insolvency in international leasing transactions.

**Event Speakers**

* Jeffrey Wool, Adjunct Professor at Trinity College Dublin and Secretary General of the Aviation Working Group.
* David Walton, former Chief Operating Officer, BOC Aviation.
* Jim Bell, Partner, Watson Farley & Williams LLP.
* Séamus Ó Cróinín, Chairman, A & L Goodbody LLP.
* Joe Fay, Partner, McCann Fitzgerald LLP.
* Additional commentary given by Mason Hayes Curran, Arthur Cox and Matheson.

**Event Objectives and Suggested Actions**

Focus on legal development and theory, transactional and dispute resolution practices, public policy, and legal education within the scope of transnational commercial and leasing law. Enhance expertise, research and education on public policy within the scope of transnational commercial and leasing law. Finally, foster international efforts and activities within this field.

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# Introduction

Friday 16 January 2025 saw the inaugural symposium of the transnational commercial and leasing law project, centred around the *Past, Present, and Future of International Leasing of Personal Property*. The project has been established under the auspices of the Aviation Working Group (AWG) through its Irish Contact Group, in association with the School of Law at Trinity College Dublin, with A&L Goodbody currently responsible for administration under a rotational arrangement. Under the leadership of Jeffrey Wool, Adjunct Professor at Trinity College Dublin and Secretary-General of the Aviation Working Group, the project aims to encourage research and education on transnational commercial and leasing law with a view to making a meaningful contribution to the development of coherent legal theory, dispute resolution practices, legal education, and public policy in that area. There is a strong interdisciplinary element to this project, concerning as it does matters of business, economics, political science, and international affairs. As a result, the project draws on expertise from academia as well as the professional legal field and other stakeholders in the commercial leasing industry. To that end, the project initially revolves around two symposia per year, the first of which was the recent launch event. The second will be on the subject of *Courts and Transnational Courts Law*, to be held in June of this year, with an associated international moot court event related to cross-border insolvency.

Highlighting the importance of enhancing education in the realm of transnational commercial and leasing law, a cohort of Project Student Associates drawn from postgraduate law students at Trinity College Dublin will be selected each year of the project to participate in its activities. As part of this arrangement, each student is partnered with a member of a law firm in the Irish Contact Group who will act as a mentor. Furthermore, in recognition of the interdisciplinary nature of the project, a Participatory Advisory Board has been established to provide advice on the activities in which the project’s interests are best served. The Board is chaired by Catherine Duffy and composed of the law firms of the Irish Contact Group, two representatives from the Law School in Trinity College Dublin, leading aviation leasing companies (AerCap, Avolon, SMBC, and Aviareto) and non-aviation companies (BNP Paribas and DCC), and representatives of Trinity College Dublin.

While the project is part of wider international efforts to promote research in the area of transnational and commercial leasing law, the symposium made use of Irish institutions and industry as a prism through which to analyse the key legal issues. Ireland is an appropriate location for such a substantial project, being the undoubted global hub of international aircraft leasing. Since the foundation of Guinness Peat Aviation (GPA) in 1975 by Tony Ryan (later of Ryanair fame), Ireland has been a central player in this arena. GPA alumni have since moved into leadership roles at some of the world’s foremost leasing firms. Ireland was also one of the first states to adopt the Cape Town Convention, whose Aircraft Protocol moreover designated Dublin as the home of its international aircraft registry, thus giving the High Court of Ireland exclusive jurisdiction over challenges to property registration in aircraft assets. Ireland’s preeminence has given rise to specialized aviation-related degrees in Irish universities, as well as the development of considerable human infrastructure to support lessors, including specialist lawyers, consultants, and financial services providers. The insights gathered from these various stakeholders are invaluable in guiding future research outputs and pinpointing essential areas for legal and policy development.

The first symposium was generously hosted by McCann FitzGerald in its Dublin office. It consisted of four parts, each focusing on a particular aspect of personal property leasing. During each part was an opportunity for attendees to give comments based on their own practical experience as well as to emphasise important areas of transnational leasing where future research could be focused. The discussion which took place the symposium is briefly outlined with reference to the foundational outline prepared by Mr. Jim Bell, Mr. David Walton and Professor Jeffrey Wool with research and related support from Watson Farley & Williams LLP. It is noteworthy that the adopted symposium format is particularly conducive to open discussion and collaboration between all players in the industry.

A general introduction of the basic terms of the subject matter and the objectives of the project was given by **Jeffrey Wool, Adjunct Professor at Trinity College Dublin** **and the Secretary General of the AWG**, who observed that there has not been systematic attention to leasing, whether in academia or international law development circles. He added that leasing is often considereda subsection of secured transactions, or a form financial intermediation. He pointed out the importance viewing leasing on its own terms and linking theory and facts. In other words, to study leasing with a balanced perspective, considering theorical and practical elements of the matter.

# Part A: Nature, History and Economic Impact of Leasing

The core of symposium commenced with **Mr. David Walton – former Chief Operating Officer of BOC Aviation –** summarising some foundational concepts relating to leasing, in particular the separation of title and possession, the right of the lessee to quiet enjoyment and the idea of residual value risks. He then made some conceptual distinctions and compared financial leases with loans and mortgages. While a financial lease is primarily used for the long-term use of an asset, loans/mortgages are used more typically for the outright purchase of assets. One similarity noted is that in English law, the lessee has the right to use the asset per the lease agreement but does not acquire buyer protections. In loans/mortgages, the borrower has the same right to use and does not obtain protections under the Sale of Goods Act 1979. A significant difference is that in a lease, the lessee may have the option to purchase or renew the lease with no obligation for the lessee to make a final payment (unless stipulated). However, in loans/mortgages, the borrower must repay the loan and maintain ownership of the asset. Regarding the remedies upon fault, the lessor may repossess the asset and demand accelerated payments or enforce the contract. But, in loans and mortgages, the lender may foreclose on a collateral or guarantee or pursue action for repayment of the loan. In this context, Mr. Walton concluded by stating that the regulatory framework and oversight can be radically different.

He continued by giving a succinct outline of some of the milestones in the history of leasing. His intervention referred to Mesopotamia and the Hammurabi Code, to Sparta, the Peloponnesian war, England’s Landlord Tenant Act, Rules of Oberon, the Hanseatic League in the Middle Ages, the Napoleon Code, and the Philadelphia Plan. Also, he addressed airline deregulation in the US, and the introduction of the low-cost model, perfected by Ryan Air. He underlined the role that Mr. Tony Ryan and his vision for a wet lease business model played in the development of the industry. Other public policies that contributed to the success of Irish aviation were the taxation regimes, the Shannon Free Zone, and Ireland’s network of Double Taxation Agreements.

It is crucial to understand the difference between a Finance Lease and an Operating Lease. During the term of both, the lessee will have the right to the exclusive possession of the asset. However, while at the end of an Operating Lease, the lessee will be expected to return the asset to the lessor, they will be offered an option to purchase the asset usually for a nominal sum at the end of a Finance Lease. A Finance Lease is therefore a “pay more, get more” solution – the rent will be higher, but in the end, the lessee is hoping to gain ownership of the asset for the rest of its economic life. The residual value risk will be on the lessee in a Finance Lease and on the lessor in an Operating Lease.

The speaker also explained using a simplified model why a Finance Lease might be a preferential mode of obtaining ownership over an outright purchase with cash. Assuming that the Finance lessor charges a 7% per annum interest rate, such an arrangement will actually be cheaper than the cost of equity (which according to the US Air Transport sector is 9.71% per annum). Finally, the presentation included a simplified model of cash inflows and outflows of a lessor. Importantly, the lessor will consider the lessee’s risk of default and the time it will take to recover possession (which may depend on whether the lessee is based in a state that is a party to the Cape Town Convention or not). Both of the above will affect the amount of the notional credit charge (insurance of the risk) and, respectively, the amount of rent payable.

After this intervention, the floor was given to **Mr. Joe Fay – Partner at McCann Fitzgerald –** whofirst commented on the ancient system of laws that applied in Ireland for approximately 1200 years, namely, the Brehon laws[[1]](#footnote-2). These laws recognized the leasing of movables and provided for a system of remedies. He added that by the 17th century, the Brehon laws had been supplanted by English Common Law. So, Irish law as it relates to the leasing of movables in a non-consumer context is based on English Common Law. The rise of regulation, largely driven by legislative developments at an EU level, is a feature of the last 15 years. The Cape Town Convention and the corresponding Aircraft Protocol are, together, the single most significant development in the industry of the last 40 years. They have provided a suite of rights, priorities, and remedies that now exist on a statutory footing.

Mr. Fay added that while the Irish corporation tax rate has been important, much greater significance has been the country’s network of double-taxation agreements which stands at 78 today of which 75 are in effect. He clarified that Ireland has committed to give effect to the requirement under the OECD Pillar Two Agreement to move to a minimum effective corporate tax rate of 15% for in-scope businesses.

Finally, regarding the economic impact of aviation leasing in Ireland, Mr. Fay shared some relevant data. He stated that more than 50% of commercial aircraft in operation today are leased and Ireland has a 60% share of that global leasing marketplace. Ireland is also home to over 50 leasing companies, including 19 out of the world's 20 top lessor companies The top three lessors have their headquarters in Dublin.

# Part B: Liability for Damages caused by leased property

Part B of the symposium focused on liability for damages caused by leased assets, exploring both the international conventions on maritime liability and national law models for lessor and lessee liability for surface damage. Special attention was given to the shipping industry whose complex operational risks and unique liability considerations resemble those of the aviation industry. A comparative study of a significantly more regulated industry may prove useful in development of new regulation. The session integrated perspectives from comparative law and explored working practices documented in Table 18, focusing on jurisdictional models for transferring liability for surface damage.

Central to the discussion were two pressing legal questions: the degree to which liability for potentially dangerous leased assets is distributed between lessors and lessees, and how effectively various legal systems ensure protection. Professor Jeffrey Wool underlined that insights on these issues can be understood in the extreme context of mass litigations following the September 11 terrorist attacks. The authors divided national laws into three groups offering varying level of protection for the lessors. In Group 1, the Owner will be held strictly liable for damage caused regardless of whether it has possession or control over the aircraft. In Group 2, the Owner will be presumed to be operating the aircraft but can easily rebut this presumption (by proving that the aircraft was leased to and under *de facto* control of the lessee) and transfer the liability to the lessee. In Group 3, the lessee will be strictly liable, the lessor’s potential liability being limited to proof of negligence on its part. Most jurisdictions follow the second model which is also the position under the Rome Convention. A “negligent entrustment” theory has been advanced as an argument for imposing liability on the lessor rather than the lessee. The theory claims that the lessor is responsible for placing assets under the control of a party not reasonably expect to operate it in way so to minimise damage. A still broader “control theory” was noted. However, Professor Jeffrey Wool deemed it unlikely that its reasoning would extend to a lessor in a sophisticated lessor-lessee relationship, and it does not appear that the courts think so either. Ultimately, this part underscores the evolving legal landscape, balancing innovation in leasing practices with equitable risk allocation.

Commentary was given by **Mr. Séamus Ó Cróinín – Partner at A&L Goodbody –** who recognised the need for further research to bring the Irish perspective on liability to the foreground of the wider international context. This is due to the important role that Ireland has played as a centre of aviation leasing and finance.

# Part C: Conflict of laws in international leasing transactions

Part C dealt with the complexities of conflict of laws in international transactions, particularly in relation to mobile assets. The traditional rule that property rights are governed by the law of the place where the asset is located (*lex situs*) often proves problematic in an aviation context due to the frequent movement of such assets. This mobility creates uncertainty, particularly where the law of one jurisdiction does not recognise property rights created under the legal framework of another jurisdiction.

While party autonomy remains a cornerstone of international legal practice on rights and obligations *inter se*, allowing parties to choose the law and jurisdiction applicable to their contracts, it can be limited by public policy exceptions. These exceptions are prevalent in areas such as employment and consumer contracts, where national rules prevail over international agreements. Property law and insolvency laws add further complications, as local conflict rules may hinder the enforcement of contractual rights.

The 1948 Geneva Convention partially addressed these challenges by applying the law of the state of registration to property interests, thereby avoiding disputes over applicable law. Going substantially further, the Cape Town Convention introduced an international property interest in mobile assets recognised in all Contracting States, removing many uncertainties as to the law applicable to creditor's interests. In addition, the Cape Town Convention resolved long-standing debates, such as whether aircraft engines should be treated as separate property, thereby improving consistency in international transactions. Conflicts over the priority of creditors' interests also highlight the challenges of different legal systems. In situations involving multiple claimants, the International Registry established under the Cape Town Convention has significantly reduced disputes by establishing a clear hierarchy of international interests based on the principle of priority.

Procedural law poses additional challenges in the context of cross-border transactions, particularly in relation to enforcement and treaty compliance. The Cape Town Convention has made significant progress in streamlining processes such as asset recovery, deregistration of aircraft from its nationality register, and export. For example, the Go First case highlights the obligation of local authorities to comply with the Convention's provisions on deregistration. This obligation provides a degree of uniformity and predictability that strengthens the framework for international transactions and reduces the risk of non-compliance by individual jurisdictions. Despite this progress, practical difficulties remain, in particular with regard to the cross-border enforcement of judgments. When a judgment is given in one jurisdiction, its recognition and enforcement in another may be hampered by procedural differences, different national legal standards or public policy considerations.

In conclusion, the Cape Town Convention has significantly improved legal certainty by harmonising rules and ensuring cross-border recognition of property interests, including the context of insolvency. However, challenges remain, particularly in the area of procedural law. While the Convention represents significant progress, it also highlights the need for further harmonisation.

A comment was given on Ireland's adoption of the Cape Town Convention and highlighted its implications. It referred to English pre-Cape Town Convention authority – *The Blue-Sky case –* and raised the question of whether Irish courts would have followed this precedent. That case became irrelevant once the Cape Town Convention was ratified in Ireland, underlining the important role of the Convention in promoting clarity and predictability in international legal matters.

# Part D: The impact of insolvency laws on leasing transactions

The last part of the symposium focused on the impact of insolvency laws on leasing transactions was led by **Mr.** **Jim Bell - Partner at Watson Farley & Williams LLP**. First, it was crucial to understand the difference between two types of insolvency proceedings – winding up/liquidation and restructuring. In both of the above, the directors’ duties shift from being owed to shareholders to being owed to creditors. However, whereas at the end of liquidation the company’s corporate existence is legally dissolved, the aim of restructuring is to allow the company to continue trading.

Insolvency poses unique challenges for cross-border transactions such as leasing, since insolvent company’s assets and creditors will almost always be located in different jurisdictions. Insolvency proceedings will vary across jurisdictions; therefore, the choice of insolvency law will be crucial. Two types of proceedings most commonly used in complex, cross-border restructuring (UK schemes of arrangement/restructuring plans and US Chapter 11 proceedings) were discussed from a comparative perspective. Some of the most important differences include availability of the proceedings to foreign entities (UK requirement of “sufficient connection” to the UK vs. a very low bar of “having assets in the US” under Chapter 11), length and cost of the proceedings (UK proceedings are generally much faster and therefore cheaper), and level of court supervision (low in the UK and high in the US).

Secondly, the cross-border nature of insolvency will largely impact the enforceability of court orders. The insolvency proceedings initiated in one jurisdiction may not be recognized under the law of another jurisdiction. If the proceedings are commenced in a jurisdiction A which is the same jurisdiction where the leased aircraft is located, the mortgagor bank may be prevented from enforcing its security and the lessor will be prevented from repossessing the aircraft. However, if the aircraft is located in a jurisdiction B which does not recognise jurisdiction A’s insolvency proceedings, the bank and lessor may not be prevented from enforcing their rights. That issue has been addressed in the EU through the introduction of EU Insolvency Regulation, and to some extent internationally by UNCITRAL Model Laws.

The Cape Town Convention has had a significant impact on the rights of the lessor of the aircraft and the bank in jurisdictions that are Cape Town Convention contracting parties. The Protocol to the Convention allows contracting parties to make a declaration adopting either Alternative A (stronger protection of the creditors) or Alternative B (more limited protection). The applicable alternative will be the one chosen by the country of the Primary Insolvency Jurisdiction (most likely the debtor’s jurisdiction of incorporation), not the country where the insolvency proceedings have been initiated.

Many contracting parties, including Ireland, have adopted Alternative A. Alternative A significantly strengthens the position of lessors and banks. Among others, the debtor is obliged to give possession of the aircraft at the end of the waiting period, an obligation to maintain the aircraft arises, and the rent due cannot be reduced unilaterally. These provisions should ensure certainty and lower the costs of financing aircraft objects. An interesting issue in need of further research is the extent to which a debtor company should be obliged to comply with terms of the lease during the waiting period/giving possession of the aircraft when these terms would impose significant costs on the company. In addition, is the insolvent company obliged to ferry the aircraft to a convenient location in order to give possession?

Finally, **Mr.Brendan Colgan– Partner at Matheson LLP –** briefly discussed the insolvency law in the Irish context. He summarised Irish Examinership (restructuring proceedings) as “improved Chapter 11 proceedings”. Compared to the United States, Irish proceedings are much quicker and less expensive. Examinership is available to any company that has its COMI (Centre Of Main Interests) in Ireland and any Irish incorporated company with a COMI outside the European Union. During Examinership, a company will be placed under court’s protection for up to 100 days (creditor’s will not be able to enforce their rights) and during that time an independent examiner will formulate a scheme of arrangement to rescue the company.

# Conclusion

The maiden symposium of the transnational commercial and leasing law project provided a collegial and collaborative environment for the exchange of views, insights, and expertise between experts from across the broad spectrum of this domain. Presenters offered a broad overview of historical developments, current trends, and possible future research directions, followed by practical comments from the Irish Contact Group and contributions from other stakeholders which provided essential shadings to the analysis. The inclusion of academics, legal professionals, students, financiers, lessors, and representatives of the international registry allowed for a truly interdisciplinary approach to personal property leasing which will help to steer future research to the important fields identified during the course of the symposium.

Among the relevant fields of study highlighted at this symposium were the following matters:

* What can be done to reinforce the leading position of Ireland in aviation? How can Ireland apply the knowledge of this experience to other sectors to excel? How can this success be replicated in other sectors?
* To what extent did English law on ship financing and leasing provide a conceptual bridge between leasing law in the late Middle Ages and its modern formulation and content?
* The Cape Town Convention has significantly improved legal certainty, but challenges remain, particularly in the area of procedural law. The Convention represents significant progress, but there is a need for further harmonisation.
* What is the extent to which a debtor company should be obliged to comply with terms of the lease during the waiting period/giving possession of the aircraft when these terms would impose significant costs on the company?

The symposium concluded with a reception in the Senior Common Room at Trinity College Dublin, generously sponsored by Aviareto Limited. At this event, Professor David Kenny, the Head of the School of Law, made a short address, welcoming participants and congratulating all the organisers for an excellent launch event.

Note: This document was prepared by the Student Associates on the School's Transnational Commercial and Leasing Law Project. The students are Keelan Daye, Yunqiu Ma, Ewhomazino Otuorimuo, Alejandro Fredes, Julia Tomasiak, and Anna Witte, all postgraduate students on the School's LLM programme working with mentors in A&L Goodbody, Arthur Cox, Mason Hayes & Curran, Matheson and McCann FitzGerald.

1. Manuscripts which go to make up our modern understanding of the Brehon laws are contained in the Library of Trinity College Dublin. [↑](#footnote-ref-2)