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TAKING THE LENDER FOR A RIDE: SECTION 1403 OF THE FEDERAL AVIATION ACT AND THE BUYER IN THE ORDINARY COURSE OF BUSINESS

When an airplane buyer in the ordinary course of business\(^1\) purchases an airplane covered by a security interest recorded under federal law,\(^2\) a question arises whether the buyer takes the airplane subject to the security interest under federal law,\(^3\) or free of that interest under state law.\(^4\) Generally, an airplane retailer requires financing to purchase his retail stock from an airplane supplier.\(^5\) Lenders loan these needed funds to the retailer, usually requiring that the newly-acquired airplanes serve as collateral se-

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\(^1\) A buyer in the ordinary course of business is a buyer who, in good faith and without knowledge that the sale to him violates the ownership rights or security interest of another, buys goods in the ordinary course of business from a person in the business of selling goods of that kind. Uniform Commercial Code (U.C.C.) § 1-201(9) (1972) (unless otherwise indicated, all citations will be to the 1972 text); see U.C.C. §§ 1-201(19), (37). Good faith is defined in U.C.C. § 1-201(19). See note 22 infra.

\(^2\) A security interest is an interest in personal property or fixtures which secures payment or performance of an obligation. U.C.C. § 1-201(37). A security interest in airplanes is recordable only under the Federal Aviation Act of 1958, 49 U.S.C. §§ 1301-1542 (1970) (F.A.A. or Act). Section 1403 of the Act provides in pertinent part:

(a) The Secretary of Transportation shall establish and maintain a system for the recording of each and all of the following:

(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;

(c) No conveyance or instrument the recording of which is provided for by subsection (a) of this section shall be valid in respect of such aircraft, aircraft engine or engines, propellers, appliances, or spare parts against any person other than the person by whom the conveyance or other instrument is made or given, his heir or devisee, or any other person having actual notice thereof, until such conveyance or other instrument is filed for recordation in the office of the Secretary of Transportation . . . .


\(^4\) See U.C.C. § 9-307(1). Section 9-307(1) states:

A buyer in the ordinary course of business (subsection (9) of Section 1-201) other than one buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

\(^5\) Since manufacturers typically do not extend credit to retailers, the retailer usually operates his business with little liquidity. Retailers generally borrow from a third party lender in order to purchase goods from the manufacturer. The lender takes a security interest in the retailer's present and after-acquired inventory. See U.C.C. § 9-204(1). The manufacturer, after receiving an order from the retailer, ships the goods to that retailer. The manufacturer then sends an invoice describing the goods to the lender, along with a draft calling for payment. The lender credits the retailer's account and awaits payment from the retailer, his security interest attaching to the goods as collateral. See U.C.C. § 9-203(1),(2). This entire transaction is known as a floor plan. See Sanders v. M.D. Aircraft Sales, Inc., 575 F.2d 1086 (3d Cir. 1978); Suburban Trust & Sav. Bank v. Campbell, 19 Ohio Misc. 74, 250 N.E.2d 118 (1969). For examples of how floor plans work in the field of aircraft financing, see text accompanying notes 73 & 99 infra. See generally E. Farnsworth & J. Honnold, Cases and Materials on Commercial Law 761-71 (3d ed. 1976).
securing the loan. To validate the security interest, the lender must record the interest with the Federal Aviation Agency under the provisions of § 1403 of the Federal Aviation Act of 1958 (FAA). Federal law preempts inconsistent state legislation. Thus, should § 1403 of the FAA grant priority to a security interest recorded under that section in addition to validating the interest, that security interest has priority over all other claims to the airplane, regardless of the result under conflicting state priority law.

If § 1403 merely validates and does not grant priority to a federally recorded airplane security interest, each state's priority law applies to airplanes purchased in that state. Under most state laws, when an airplane covered by a federally recorded airplane security interest is sold by the retailer to the buyer, the lender's security interest prevails over all other claims to the plane. Should the buyer of the airplane qualify as a buyer in the ordinary course of business under state law, however, most states give priority to that buyer's claim over the claim of the holder of a security interest recorded under § 1403 of the FAA. Consequently, whether the buyer in the ordinary course of business or the lender prevails depends on whether § 1403 of the FAA preempts state laws favoring the buyer in the ordinary course of business by granting priority to the federally recorded interest. All courts agree that § 1403 preempts state security interest recording laws. The courts are divided, however, on the question of whether § 1403 grants priority to a security interest recorded under its provisions, thus preempting state laws favoring the buyer in the ordinary course of business.

State laws regarding the continuation of a security interest in collateral are contained in Article 9 of the Uniform Commercial Code (UCC or Code).

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6 See note 5 supra.
8 U.S. Const. art. VI, cl. 2; see Sears, Roebuck & Co. v. Stiffel Co., 376 U.S. 225, 229 (1964); U.C.C. § 9-104(a); note 35 infra.
9 Dowell v. Beech Acceptance Corp., 3 Cal. 3d 544, 476 P.2d 401, 91 Cal. Rptr. 1 (1970); see U.C.C. § 9-104(a); note 31 infra.
11 See U.C.C. § 9-306(2); note 17 infra.
15 See note 67 infra.
Section 9-306(2) provides that, except where Article 9 states otherwise, a security interest continues in collateral despite sale or other disposition of that collateral unless that sale or other disposition is authorized by the holder of the security interest. Section 9-307(1), an exception to this general rule, states that a buyer in the ordinary course of business takes collateral free of a security interest created by his seller even though that security interest is perfected, and even though the buyer knows of its existence. The Code defines a "buyer in the ordinary course of business" as one who, in good faith and without knowledge that the sale to him violates the security interest of a third party in the goods, buys those goods in the ordinary course of business from a person in the business of selling goods of that kind. The lender, by allowing the retailer to retain the goods covered by a security interest, loses any claim he has in goods.
sold by the retailer to a buyer in the ordinary course of business.\textsuperscript{26} Thus, when a purchaser qualifies as a buyer in the ordinary course of business, the lender must look solely to the retailer, not to the original collateral in the hands of the buyer, to satisfy the outstanding indebtedness secured by the security interest.\textsuperscript{27} Underlying this result is the legislative determination that a buyer in the ordinary course of business should not be expected to ascertain what prior interests, if any, exist on the goods he wishes to buy.\textsuperscript{28} The purpose of UCC § 9-307(1) is to protect a buyer in the ordinary course of business from a security interest created by his retailer, thus facilitating the free flow of goods in commerce.\textsuperscript{29} Thus, airplane buyers in the ordinary course of business argue that UCC § 9-307(1) compels a determination that those buyers take an airplane free of a security interest covering that airplane created by their sellers.\textsuperscript{30}

Contrary to the position taken by buyers of airplanes in the ordinary course of business, lenders assert that UCC § 9-104(a) controls the conflict with those buyers.\textsuperscript{31} UCC § 9-104(a) states that Article 9 of the Code is preempted to the extent that a contrary federal statute applies to the transaction.\textsuperscript{32} This section restates the rule contained in the supremacy clause of the United States Constitution.\textsuperscript{33} If, as the lenders argue, § 1403 of the FAA is found to subordi\textsuperscript{nate the rights of an airplane buyer in the ordinary course of business under UCC § 9-307(1) to the claim of a federally recorded airplane security interest, § 1403, not UCC § 9-307(1), controls the conflict.\textsuperscript{34} Courts are reluctant to preempt state statutes such as UCC § 9-307(1), however, unless the federal statute clearly states that preemption was intended.\textsuperscript{35} This reluctance is due to the fact that statutes

\textsuperscript{26} Matthews v. Arctic Tire, Inc., 106 R.I. 691, 694, 262 A.2d 831, 833 (1970); see U.C.C. 9-307(1); text accompanying notes 18-21 supra.


\textsuperscript{29} See note 25 supra.


\textsuperscript{31} See, e.g., Haynes v. GECC, 432 F. Supp. 763, 766 (W.D. Va. 1977). UCC § 9-104(a) states: "This Article does not apply (a) to a security interest subject to any statute of the United States, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property. . . ." Section 9-104(a) is in accord with the rule that state laws must not be allowed to defeat rights guaranteed under federal law. See Sears, Roebuck & Co. v. Stiffel Co., 376 U.S. 225, 229 (1964); U.S. Const., art VI, cl. 2; note 35 infra.

\textsuperscript{32} See note 31 supra; note 35 infra.

\textsuperscript{33} Compare U.C.C. § 9-104(a) (see note 31 supra) with U.S. Const. art VI, cl. 2.

\textsuperscript{34} See Dowell v. Beech Acceptance Corp., 3 Cal. 3d 544, 476 P.2d 401, 91 Cal. Rptr. 1 (1970). In Dowell, § 1403 of the FAA was found to subordinate the rights of a buyer in the ordinary course of business to a federally recorded airplane security interest. Id. at 547, 476 P.2d at 404, 91 Cal. Rptr. at 4; see text accompanying notes 72-94 infra.

such as UCC § 9-307(1) represent legislative action in a field traditionally occupied by the states. 25

The Ship Mortgage Act, 1920 (SMA) 26 illustrates the structure of a federal statute which preempts UCC § 9-307(1). A properly recorded preferred ship mortgage, 27 foreclosed on in accordance with the SMA, 28 is granted priority over all other preexisting claims to the vessel, excepting certain preferred maritime liens. 29 Original jurisdiction for the foreclosure of a preferred ship mortgage is granted exclusively to the district courts of

Grain Warehouse Act, asserting that the United States Warehouse Act preempted the state act. The particular question before the Rice Court was whether the federal warehouse act preempted the state act, or instead whether the two acts could be read so as to supplement each other. 331 U.S. at 231. The Court determined that in order to answer the above-stated questions, the intent of Congress had to be ascertained. Id. at 230. The Court stated that when Congress acts in a field traditionally occupied by the states, a court must start with the assumption that the state act was not to be preempted unless preemption was the clear intent of Congress. Id. The Rice court reasoned that preemption occurs where the scheme of the federal act is so pervasive and complete that it precludes any participation by the states. Id. Likewise, the field legislated upon may be of such great federal interest that preemption is necessary. Id. Thus, after examining the United States Warehouse Act, the Court concluded that it was so comprehensive as to necessitate the conclusion that it preempted the Illinois Act. Id. at 235-36; see U.S. Const. art. VI, cl. 2. In Schwartz v. Texas, 344 U.S. 199 (1952), the petitioner challenged the prosecution’s use of intercepted telephone conversations in his trial. Texas law permitted the use of these communications in trials, while federal law prohibited such use. 344 U.S. at 200. The Court disagreed with Schwartz, stating that § 605 of the Federal Communications Act applied only to trials in federal courts. The Court stated that it would distort the true meaning of Congress by stating that § 605 was meant to preempt state law. Id. at 202; see note 145 infra. The Court therefore affirmed Schwarz’s conviction.

344 U.S. at 204.

M See Sigman, supra note 25, at 342-43; note 35 supra.


26 A ship mortgage is recordable under 46 U.S.C. § 921 (1970), which states in pertinent part:

(a) No sale, conveyance, or mortgage which, at the time such sale, conveyance, or mortgage is made, includes a vessel of the United States, or any portion thereof, as the whole or any part of the property sold, conveyed, or mortgaged shall be valid, in respect to such vessel, against any person other than the grantor or mortgagor, his heir or devisee, and a person having actual notice thereof, until such bill of sale, conveyance, or mortgage is recorded in the office of the collector of customs of the port of documentation of such vessel, as provided in subsection (b) of this section.


the United States.\textsuperscript{41} By enacting the SMA, Congress intended to encourage lenders to invest in America's merchant marine fleet.\textsuperscript{42} The SMA sought to accomplish this goal by granting priority to preferred ship mortgages.\textsuperscript{43} Under the Act, a buyer in the ordinary course of business is not protected should he buy a ship upon which a preferred ship mortgage has been recorded.\textsuperscript{44} The purchaser of a vessel who takes title to a ship in any way other than foreclosure in admiralty acquires imperfect title to that ship.\textsuperscript{45} The SMA, therefore, preempts UCC § 9-307(1) through the application of UCC § 9-104(a).\textsuperscript{46}

The Federal Motor Vehicle Lien Act (FMVLA)\textsuperscript{47} is an example of a non-

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\textsuperscript{42} Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 38-39 (1934); Walter E. Heller & Co. v. M/V Mr. Ed, 270 F. Supp. 830, 832 (E.D. La. 1967). Before the passage of the SMA, a security interest in a vessel was "practically worthless" because it was subordinate to all other maritime liens, and was, therefore, wholly unacceptable to American lenders. Detroit Trust Co. v. The Thomas Barlum, 293 U.S. at 39; Lord & Glenn, The Foreign Ship Mortgage, 56 YALE L.J. 923, 937 (1947); Smith, Ship Mortgages, 47 TUL. L. REV. 608 (1973). The SMA was designed to afford greater security to the holders of preferred ship mortgages by granting them the right to cut off all claims in the vessel both prior to and subsequent to their claims except for preferred maritime liens. See 46 U.S.C. § 953(b) (1970); note 39 supra.
\textsuperscript{43} Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 38-39, 48 (1934); see note 40 supra.
\textsuperscript{44} See 46 U.S.C. § 953(b) (1970); note 40 supra. A buyer in the ordinary course of business cannot use his lack of knowledge to defeat a preferred ship mortgage. Toy, Introduction to the Law of Maritime Liens, 47 TUL. L. REV. 559, 564 (1973) [hereinafter cited as Toy]; see U.C.C. § 9-307, Comment 2.
\textsuperscript{45} Toy, supra note 44, at 565; see note 44 supra.
\textsuperscript{46} See U.C.C. § 9-104(a); note 31 supra. The UCC drafters cite the SMA as an example of a federal statute preempting UCC § 9-307(1). UCC § 9-104, Comment 1. One case has discussed the Ship Mortgage Act in relation to UCC § 9-104(a). Security Bank v. Levens, 480 P.2d 706 (Or. Sup. Ct. 1971). In Security Bank, the bank loaned money to the defendant in order that the defendant might purchase a pleasure craft. Under the terms of the security agreement, an unauthorized sale of the vessel constituted a default. 480 P.2d at 707. The defendant then contracted to sell the craft without plaintiff's consent. Id. Plaintiff bank then declared the loan immediately due and payable, and the contract price of the craft was placed in escrow. Id. Defendant contended that the Oregon enactment of UCC § 9-104(a) provides a blanket exclusion for all ship mortgages, leaving the plaintiffs with only an action on the promissory note. Id. at 707-08. Plaintiff asserted that UCC § 9-104(a) was not a blanket exclusion, and argued that the provision only excluded security interests to the extent that the Ship Mortgage Act pertains to the transaction. Id. The court agreed with the plaintiff, finding that the secured party could pursue the rights offered him by the UCC even though a ship mortgage was involved. Id. at 708. State law applies between parties to a non-preferred ship mortgage. Id.
\textsuperscript{47} Interstate Commerce Act, Part II; Motor Carriers, 49 U.S.C. §§ 301-327 (1970). Section 313 of the Act, commonly known as the Federal Motor Vehicle Lien Act (FMVLA), provides for the recordation of security interests in trucks, tractors, trailers, or semi-trailers having a rated capacity of ten thousand or more pounds. Id. at § 313(a), (b). One can record a motor vehicle security interest in three different ways, depending on the recordation procedure of the state in which the security interest is created. Should the state in which the security interest is created require or permit indication of such an interest on a certificate of title, such an indication perfects that interest as to all persons in all jurisdictions. Id. at § 313(b). If the state permits public filing of motor vehicle interests, such a filing will perfect that interest
preempting federal security interest statute. 48 Prior to the passage of this act, a holder of a security interest in a large motor vehicle49 could only perfect 50 that interest by recording it in all jurisdictions through which the motor vehicle might pass.41 Lenders were reluctant to lend to individuals wishing to purchase such large motor vehicles due to this burdensome requirement and the dangers it posed to their security.42 In order to facilitate such lending, Congress removed the multiple recordation requirement by allowing the holder of a security interest in certain large motor vehicles to record that interest in only one state in order to perfect it in all states.53

Under the FMVLA, the recording provisions of the vehicle’s home state apply.54 Unlike the SMA, therefore, the FMVLA does not provide for federal recordation of large motor vehicle security interests or for priority determination for such an interest.55 Congress clearly intended to leave recordation and priority determination in motor vehicle financing to the states.56 Consequently, the FMVLA does not grant priority to the holder of a security interest in large motor vehicles over the claims of a buyer in the ordinary course of business, and therefore does not preempt UCC § 9-307(1).57

as to all persons in all jurisdictions. Id. at § 313(c). When a state provides neither a certificate of title system nor a public filing system, perfection of a motor vehicle interest shall be governed by the law of that state. Id. at § 313(d). An interest so perfected shall be perfected as to all persons in all jurisdictions. Id. The FMVLA is noteworthy for the fact that it contains the first statutory definition of perfection. Id. at § 313(a)(4); see note 50 infra. See generally G. Gilmore, Security Interests in Personal Property § 13.7 at 434 (1965) [hereinafter cited as Gilmore].

48 See Gilmore, supra note 47, § 13.7 at 432-33; Sigman, supra note 25, at 332. The FMVLA, 49 U.S.C. § 313 (1970), see note 47 supra, does not establish a federal law for large motor vehicle security interests because perfection is established by applicable state law. Gilmore, supra note 47, § 13.7 at 434. The FMVLA is essentially irrelevant because of the almost universal enactment of the UCC. See Sigman, supra note 25, at 332. Adding force to the argument that the FMVLA does not preempt Article 9 of the UCC through the operation of UCC § 9-104(a) is the fact that unlike the SMA, the FMVLA does not provide for federal recordation of motor vehicle security interests. Compare 49 U.S.C. § 313 (1970) with 46 U.S.C. § 921 (1970).


52 Gilmore, supra note 47, § 13.7 at 431.


54 See 49 U.S.C. § 313(b),(c),(d) (1970); note 47 supra.


57 See note 56 supra.
Section 1403 of the FAA has characteristics of both the SMA and the FMVLA. Although the SMA and the FMVLA were enacted to encourage and facilitate investment in their respective industries, the acts are viewed as opposites regarding preemption of state priority law. The SMA is viewed as a federally preempting statute under UCC § 9-104(a), because it provides for federal recordation of ship mortgages and grants priority to an interest so recorded. The FMVLA, due to its lack of priority determinative language and its reliance on state recording provisions, is not viewed as federally preempting. Courts are split, however, on the issue of whether § 1403 of the FAA, a statute providing for federal recordation like the SMA, but silent on priorities like the FMVLA, preempts UCC § 9-307(1).

Section 1403 provides that no conveyance or other instrument concerning aircraft shall be valid against any person other than the parties to the conveyance or instrument, their heirs and devisees, and those with actual knowledge of the conveyance or instrument, unless that conveyance or instrument is recorded with the Federal Aviation Agency. Section 1403 provides the exclusive method for recording airplane security interests, thus validating them. If an airplane security interest is not recorded with

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55 See notes 42 & 48 supra.
56 See Gilmore, supra note 47, §§ 13.2 & 13.7 at 405, 434; Sigman, supra note 25, at 327-28, 331-32.
60 See 49 U.S.C. § 313 (1970); note 47 supra; text accompanying note 54 supra.
61 See 49 U.S.C. § 313 (1970); note 47 supra. The import of § 313 is to confer national effect on state perfection systems. Sigman, supra note 25, at 332.
62 See note 56 supra.
64 49 U.S.C. § 1403 (1970); see note 2 supra.
the Federal Aviation Agency it is invalid against third parties unless they had actual knowledge of the security interest.79

Lenders, however, have sought to convince courts that § 1403 should be read as more than simply a recordation provision.71 Holders of airplane security interests have asserted that besides providing the only method through which an airplane security interest can be validated, § 1403 grants priority to an airplane security interest recorded under its provisions over the claim of a buyer in the ordinary course of business.72 This interpretation preempts UCC § 9-307(1) through the operation of UCC § 9-104(a).73 Some courts have found this preemption argument persuasive.74

In Dowell v. Beech Acceptance Corp.,75 the leading case accepting the preemption argument, the California Supreme Court gave priority to a lender’s prior federally recorded security interest over a claim of a buyer in the ordinary course of business.76 Nevadair, an airplane distributor,
delivered a new airplane to Tanger, an airplane retailer, pursuant to a conditional sales contract entered into by both parties. The contract of sale stated that Tanger was not to sell the plane without Nevadair's consent, and that Nevadair retained a security interest in the airplane to the extent of the unpaid balance of the purchase price thereon. Nevadair then assigned its security interest to Beech Acceptance Corporation, an aircraft financier. Beech recorded this security interest with the Federal Aviation Agency under § 1403. Dowell, a buyer in the ordinary course of business, subsequently purchased an airplane covered by this security interest from Tanger. When Beech was notified that Tanger had sold the airplane to Dowell, Beech and Nevadair removed the airplane from Dowell's possession. Dowell then brought suit to establish his title to the airplane.

The Dowell court recognized that an airplane buyer in the ordinary course of business takes his airplane free of a security interest covering that airplane unless § 1403 preempts UCC § 9-307(1). The court, in determining that § 1403 does so preempt, found that § 1403 has a dual purpose.

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77 3 Cal. 3d at 546, 476 P.2d at 401, 91 Cal. Rptr. at 1-2. The airplane, a new Beechcraft Bonanza, was sold by its manufacturer to Nevadair, a distributor. Id., 476 P.2d at 401, 91 Cal. Rptr. at 1-2; see note 5 supra; note 101 infra.
78 Id. at 548, 476 P.2d at 401, 91 Cal. Rptr. at 2.
79 Id. at 546, 476 P.2d at 401-02, 91 Cal. Rptr. at 2.
80 Id., 476 P.2d at 402, 91 Cal. Rptr. at 2; see note 2 supra. Beech recorded both the security interest and its assignment to Beech. 3 Cal. 3d at 546, 476 P.2d at 402, 91 Cal. Rptr. at 2; see 49 U.S.C. § 1403 (1970); note 2 supra.
82 3 Cal. 3d at 546, 476 P.2d at 402, 91 Cal. Rptr. at 2. Dowell paid the $30,000 purchase price in full. 3 Cal. 3d at 546, 476 P.2d at 402, 91 Cal. Rptr. at 2.
83 Id. at 547, 476 P.2d at 402, 91 Cal. Rptr. at 2. Under the terms of the conditional sales contract, Tanger was prohibited from selling the airplane without Beech's consent. See text accompanying note 78 supra. Tanger, however, did sell the airplane without Beech's consent, and did not notify Beech of the sale until two months afterwards. 3 Cal. 3d at 546-47, 476 P.2d at 401-02, 91 Cal. Rptr. at 2.
84 Id. at 547, 476 P.2d at 402, 91 Cal. Rptr. at 2. The California Court of Appeals affirmed the Superior Court's decision granting Dowell title to the airplane and $175 in compensatory damages, but reversed the $1,000 in punitive damages awarded Dowell by the Superior Court. Dowell v. Beech Acceptance Corp., 4 Cal. App. 3d 798, 801, 84 Cal. Rptr. 654, 664 (1970). The state supreme court reversed on all issues. 3 Cal. 3d at 552, 476 P.2d at 406, 91 Cal. Rptr. at 6.
85 3 Cal. 3d at 549, 476 P.2d at 403, 91 Cal. Rptr. at 3; see Cal. Com. Code § 9307 (West Cum. Supp. 1978); note 81 supra.
86 3 Cal. 3d at 551, 476 P.2d at 405, 91 Cal. Rptr. at 5. The Dowell court found that § 1403 was intended both to simplify the task of recording an airplane security interest and to protect the holders of interests so recorded. Id. at 551, 476 P.2d at 405, 91 Cal. Rptr. at 5. The court, in formulating this dual purpose, relied on the construction given § 1403 in two California appellate court decisions, International Atlas Serv., Inc. v. Twentieth Century Aircraft Co., 251 Cal. App. 2d 434, 59 Cal. Rptr. 495 (1967), cert. denied, 389 U.S. 1038 (1968) and Pope v. National Aero Fin. Co., 236 Cal. App. 2d 722, 46 Cal. Rptr. 233 (1965). In Atlas, defendant manufacturer sold an airplane to a retailer and retained a security interest in the airplane which was recorded under § 1403. 251 Cal. App. 2d at 434, 59 Cal. Rptr. at 499. Plaintiff, an airplane maintenance, and repair service, then performed services on the airplane
According to the court, Congress enacted § 1403 in order to simplify the confused field of aircraft security interest recordation by establishing a central filing office. Dowell further reasoned that § 1403 was enacted to protect the holders of airplane security interests. Accordingly, the court concluded that neither of these purposes was served if buyers in the ordinary course of business could defeat a federally recorded security interest through a mechanical operation of UCC § 9-307(1). After developing this policy foundation, the court reasoned that because Beech had recorded its security interest under § 1403, Dowell had constructive notice of that security interest and should have searched title. Thus, the Dowell court awarded possession of the airplane to the secured party over the claim of the buyer in the ordinary course of business.

Although admitting that cases holding for the buyer in the ordinary course of business in similar circumstances had strong appeal from a policy perspective, the court refused to "apply state law in a manner virtually

for which it was not compensated. The retailer subsequently defaulted on his obligation to the manufacturer, and Twentieth Century repossessed the plane. Atlas then sued Twentieth Century for the value of its unpaid services. Id., 59 Cal. Rptr. at 486. The court, faced with this conflict between the wholesaler and the mechanical service, held for the wholesaler. Id., 59 Cal. Rptr. at 497. The court reasoned that all California law relating to title and liens to personal property in airplane component parts had been superseded by § 1403. Id., 59 Cal. Rptr. at 497. The Atlas court proceeded to set forth its construction of § 1403, deciding that its provisions were intended to "bring order into the field of aircraft ownership and finance . . . [and] to set up a comprehensive system of centralized recordation, which, if properly used, provides adequate protection for all substantial property interests in large aircraft . . . " Id., 59 Cal. Rptr. at 498.

In Pope v. National Aero Fin. Co., 236 Cal. App. 2d 722, 46 Cal. Rptr. 233 (1965), the holder of an airplane security interest failed to record that interest until after such time as plaintiffs claimed an ownership right in the plane. Id. at 722, 46 Cal. Rptr. at 238, 240-41. The security interest, therefore, was not properly validated until such time. Id., 46 Cal. Rptr. at 241; see 49 U.S.C. § 1403 (1970); note 2 supra. Nonetheless, the court held for National Aero Finance, stating that it would violate the purpose of the federal act to permit Pope, who did not record his ownership interest, to prevail over National Aero Finance, which lent money on the strength of another's recorded title to the airplane and later recorded its interest. 236 Cal. App. 2d at 722, 46 Cal. Rptr. at 241. The lesson in Pope is caveat emptor—record quickly. The Pope court essentially construed § 1403 as a race statute, holding for National Aero Finance because it recorded first. Neither Atlas nor Pope, however, deal with the conflict between a recorded airplane security interest and a subsequent buyer in the ordinary course of business who has recorded his claim to the airplane. See Haynes v. GECC, 432 F. Supp. 763 (W.D. Va. 1977).

7 3 Cal. 3d at 550, 476 P.2d at 405, 91 Cal. Rptr. at 5; see note 86 supra.
8 3 Cal. 3d at 550, 476 P.2d at 405, 91 Cal. Rptr. at 5; see note 86 supra.
9 3 Cal. 3d at 550-51, 476 P.2d at 405, 91 Cal. Rptr. at 5.
10 Id. at 549, 476 P.2d at 404, 91 Cal. Rptr. at 4.
11 Id. at 552, 476 P.2d at 406, 91 Cal. Rptr. at 6.
ignoring the existence of the federal system. The Dowell court stated that if federally recorded security interests were not protected against the claims of buyers in the ordinary course of business who fail to search title, federal policy favoring such security interests would be frustrated. Additionally, the court was concerned that should priority not be granted to federally recorded security interests, buyers in the ordinary course of business would “cavalierly decline” to search title so as to avoid “actual notice” as defined in UCC § 9-307(1). The Dowell court, therefore, found the federal policy behind § 1403 so strong as to necessitate the conclusion that § 1403 preempted UCC § 9-307(1). Most courts, however, have disagreed with the Dowell analysis.

Haynes v. General Electric Credit Corp. (GECC) represents the contrary position to Dowell, and the majority view. M.D. Aircraft Co. (M.D.), a retailer, purchased a used airplane from one Peebles. To finance this transaction, M.D. obtained a loan from GECC, the newly acquired airplane serving as collateral securing the loan. GECC immediately recorded its security interest with the Federal Aviation Agency under § 1403. Haynes, a buyer in the ordinary course of business, subsequently bought the airplane from M.D. and recorded his purchase under § 1403. Upon learning of GECC’s interest in the airplane, Haynes instituted a declaratory judgment action to determine whether he purchased the airplane free of GECC’s federally recorded security interest. Haynes asserted that § 1403 did not grant priority to an airplane security interest recorded under that section’s provisions, and did not preempt UCC § 9-307(1). Accordingly, Haynes argued that he should prevail over GECC’s security interest because of his status as a buyer in the ordinary course of business.

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82 3 Cal. 3d at 550, 476 P.2d at 405, 91 Cal. Rptr. at 5.; see Sears, Roebuck & Co. v. Stiffel Co., 376 U.S. 225, 229 (1964); notes 31 & 35 supra.
83 Id., 476 P.2d at 406, 91 Cal. Rptr. at 5.; see note 21 supra.
84 3 Cal. 3d at 551-52, 476 P.2d at 405, 91 Cal. Rptr. at 5.; See note 67 supra.
86 432 F. Supp. at 768; see note 67 supra.
87 432 F. Supp. at 763-64; see text accompanying notes 77 & 78 supra.
88 432 F. Supp. at 764. M.D. executed a note payable to GECC in the amount of $26,000. M.D. and GECC then entered into a security agreement, see UCC § 9-104(a), in which the airplane or the proceeds from the airplane’s sale were to serve as collateral securing the loan. 432 F. Supp. at 764; see note 5 supra. The security agreement in Haynes did not prohibit the sale of the collateral by the retailer without the consent of the holder of the security interest, as did the security agreement in Dowell. 432 F. Supp. at 768; see notes 75 & 80 supra.
89 432 F. Supp. at 764; see 49 U.S.C. § 1403 (1970); note 2 supra.
90 432 F. Supp. at 765-66; see U.C.C. §§ 1-201(9); 9-307(1); note 1 supra; text accompanying notes 18-21 supra. Virginia’s version of UCC § 9-307(1) is identical to the Uniform Act. Compare U.C.C. § 9-307(1) with Va. Code § 8.9-307(1). See note 81 supra.
92 432 F. Supp. at 763. After Haynes purchased the airplane, GECC informed him that the airplane was covered by GECC’s security interest, and that there was an unpaid balance of $26,000, plus interest, on the security interest. Id. at 764.
93 Id.; see 49 U.S.C. § 1403 (1970); U.C.C. §§ 9-104(a); 9-307(1); notes 4 & 31 supra.
GECC, using the Dowell rationale, asserted that § 1403 preempts UCC § 9-307(1) because of the strong policy of protection behind the federal act. The Haynes court disagreed, holding that under state priority law, Haynes held title to the airplane free of GECC’s interest.

The Haynes court rejected Dowell, finding that § 1403 was enacted merely to provide a convenient central place for the recording of aircraft security interests, and not to grant such a recorded interest priority over the claim of a buyer in the ordinary course of business. The Haynes court observed that the wording of § 1403 defeats any attempt to characterize that section as priority determinative and preemptive. The court stated that § 1403 is directed to validation of a security interest, not to a priority determination of that interest. As further support for its conclusion, the Haynes court cited the legislative history of § 1403 and that of its legislative predecessor, § 503 of the Civil Aeronautics Act of 1938 (CAA).

107 See U.C.C. §§ 1-201(9); 9-307(1); notes 1 & 4 supra.
108 432 F. Supp. at 766. Defendant GECC, unlike Beech Acceptance Corp. in Dowell, specifically relied on UCC § 9-104(a) in order to argue that UCC § 9-307(1) had been preempted. Id. GECC asserted that UCC § 9-104(a) excludes aircraft security interests from the coverage of Article 9 because the field of aircraft secured transactions had been preempted by § 1403. Id. The Haynes court, disagreeing with this conclusion, stated that Article 9 of the UCC is preempted only if § 1403 grants priority to a federally recorded airplane security interest. Id.; see note 35 supra.
109 432 F. Supp. at 769. The Court determined that the prior position of a buyer in the ordinary course of business triumphed over the secured party relying on § 1403. Id. at 767-69.
110 432 F. Supp. at 765, 768. The Haynes court agreed with Dowell that § 1403 was meant to provide a central place for the recording of aircraft security interests. 432 F. Supp. at 765; see note 86 supra. The Haynes court, however, rejected Dowell’s conclusion that § 1403 was meant to protect the holders of the airplane security interests by granting their interests priority over the claims of a buyer in the ordinary course of business. 432 F. Supp. at 765; see text accompanying note 86 supra.
112 See note 111 supra.
113 432 F. Supp. at 766-67; see Civil Aeronautics Act of 1938, Pub. L. No. 75-706, § 503(a),(b), 52 Stat. 1006 (1938). In 1964, however, an amendment to § 1403 was proposed which, if passed, might have preempted UCC § 9-307(1). See HEARINGS ON AIRCRAFT TITLES BEFORE THE SUBCOMM. ON TRANSPORTATION AND AERONAUTICS OF THE COMM. ON INTERSTATE AND FOREIGN COMMERCE, 88th Cong., 2d Sess. 885-86 (1964). Various Congressmen, however, were concerned that this proposed amendment might grant priority to a federally recorded security interest over all other claims. Id. Replying to these reservations, a representative of the Federal Aviation Agency stated that a federally recorded security interest never had, and would not have by virtue of this proposed amendment, priority over all other claims. Id. Despite the probative value of these comments, however, the views of a subsequent Congress regarding the acts of an earlier Congress are not given great weight. See Waterman S.S. Corp. v. United States, 381 U.S. 252, 268-69 (1964); United States v. UMW, 330 U.S. 258, 281-82 (1947). Introduction of a subsequently rejected amendment is not permissible to show the intent of the Congress which passed the original act. See United States v. Wise, 370 U.S. 405, 411 (1961); Fogarty v. United States, 340 U.S. 8, 13 (1950). But see Dowell v. Beech Acceptance Corp., 4 Cal. App. 3d 798, 84 Cal. Rptr. 654, vacated, 3 Cal. 3d 544, 476 P.2d 401, 91 Cal. Rptr. 1 (1970). This proposed amendment, although of little weight in court, is academic evidence of lack of preemptive congressional intent.

Faced with the silence of § 1403 and its legislative history on the priority question, some
tion 1403 of the FAA reenacted § 503 of the CAA without substantial change.\textsuperscript{114} The legislative history of § 503 indicates no congressional intent to determine priority.\textsuperscript{115}

The Haynes court was further persuaded by UCC § 9-104(a) and an Official Comment thereto.\textsuperscript{116} Written before the enactment of the FAA, the Comment states that although § 503 of the CAA preempts UCC filing provisions, to the extent that § 503 does not regulate the rights of the parties affected by a transaction, airplane security interests remain subject to UCC Article 9.\textsuperscript{117} The Comment further states that legislation covering airplane financing, proposed to Congress in 1958, would preempt Article 9 if passed.\textsuperscript{118} Observing that this all-inclusive legislation was never passed, the Haynes court concluded that the Code drafters viewed § 503 and § 1403 as non-preemptive.\textsuperscript{119}

In addition, the Haynes court found that the state policy favoring a buyer in the ordinary course of business is so strong as to necessitate a holding for such a buyer.\textsuperscript{120} The court reasoned that an airplane buyer in the ordinary course of business should be allowed to assume that his retailer has the right to sell the airplane free of all security inter-

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\textsuperscript{114} See Haynes v. GECC, 432 F. Supp. 763, 766-67 (W.D. Va. 1977); Dowell v. Beech Acceptance Corp., 4 Cal. App. 3d 798, 84 Cal. Rptr. 654, vacated, 3 Cal. 3d 544, 476 P.2d 401, 91 Cal. Rptr. 1 (1970); Southern Jersey Airways, Inc. v. National Bank, 108 N.J. Super. 369, 261 A.2d 399, 403 (1970); 49 U.S.C. § 1403 (1970); note 2 supra. The legislative history of § 503 of the C.A.A. is far more helpful on the priority question than is that of its successor. See House Comm. on Interstate & Foreign Commerce, to Create a Civil Aeronautics Authority, H.R. Doc. No. 9738, 75th Cong., 3d Sess. 406-07 (1938) [hereinafter cited as Hearings]. This history states that § 503 of the C.A.A. was enacted to protect holders of airplane security interests by providing a central place for the recordation of those interests. Id. at 406. But see note 86 supra. Other legislative history of § 503 strongly indicates that § 503 was not intended to grant priority to a federally recorded airplane security interest. See S. Rep. No. 1661, 75th Cong., 3d Sess. 1001 (1938); 83 Cong. Rec. 6757 (1938); notes 139 & 144 infra.


\textsuperscript{116} 432 F. Supp. at 765-66; see note 113 supra; note 144 infra.

\textsuperscript{117} 432 F. Supp. at 766. Section 8.9-104(a) of the Virginia Code contains the old UCC comment, written before the enactment of 49 U.S.C. § 1403 (1970). The Comment states that to the extent that § 503 of the CAA does not regulate the rights of parties affected by airplane secured transactions, such security interests remain subject to Article 9. U.C.C. § 9-104, Comment 1 (1958); see note 31 supra. UCC Comments, however, are not law and can only be used as an interpretive aid.

\textsuperscript{118} See U.C.C. § 9-104, Comment 1 (1958).

\textsuperscript{119} See note 117 supra.

\textsuperscript{120} 432 F. Supp. at 766.
Thus, the court decided that because GECC decided to leave the plane in the retailer's possession, GECC, not Haynes, should bear the loss occasioned by the retailer's default.122

The Dowell court found § 1403 preemptive due to the strong expression of federal policy within the statute.123 The Haynes court found no such expression, and therefore subordinated the federally recorded security interest to the ownership rights of the buyer in the ordinary course of business.124 The holdings of the courts are based upon their divergent conclusions regarding the purpose of and policy behind § 1403.125

The language of § 1403 concerns only the validity of a federally recorded airplane security interest.126 Validation of an airplane security interest does not equal a granting of priority to that interest.127 Unless recorded under § 1403, an aircraft security interest is invalid as to any other person other than the parties to the security interest, their heirs and devisees, and those with actual notice thereof.128 In this respect, the language of § 1403 is much like that of the FMVLA.129 Neither act addresses the issues of priority determination or preemption in their language, as does the SMA.130 The

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111 432 F. Supp. at 767. The Haynes court cited State Securities Co. v. Aviation Enter., Inc., 355 F.2d 225 (10th Cir. 1966), United States Aviation Underwriters, Inc. v. WTAE Flying Club, 300 F. Supp. 341 (W.D. Pa. 1969), Northern Ill. Corp. v. Bishop Distrib. Co., 284 F. Supp. 121 (W.D. Mich. 1968), and Texas Nat'l Bank v. Auferheide, 235 F. Supp. 599 (E.D. Ark. 1964), as supporting the proposition that the buyer in the ordinary course of business should prevail. 432 F. Supp. at 767. The Haynes court's citation of State Securities, however, is puzzling. In State Securities, the holder of an airplane security interest not recorded under § 1403 brought suit to foreclose on an airplane sold to a buyer in the ordinary course of business. State Securities Co. v. Aviation Enter., Inc., 355 F.2d at 226. The failure to record an airplane security interest invalidates that interest as to buyers in the ordinary course of business. 49 U.S.C. § 1403 (1970); see note 2 supra. Thus, the State Securities court concluded that, under state law, the buyer must prevail against the unrecorded interest. 355 F.2d at 229. The State Securities case is clearly not on point, and merely serves to confuse the real issue of whether § 1403 preempts UCC § 9-307(1) when the recording provisions of § 1403 have been followed. See note 17 supra.

112 432 F. Supp. at 767; see note 119 supra.


114 432 F. Supp. at 767; see note 110 supra.

115 See notes 86 & 110 supra.


SMA, besides providing for the validation of ship mortgages, grants priority to a properly recorded preferred ship mortgage. Thus, the SMA sets forth a strong basis in its language for finding that statute priority determinative.

The Haynes court recognized that the language of § 1403 cannot be read as broadly as that of the SMA, concluding that § 1403 is not preemptive. The Dowell court did not discuss the language of § 1403, instead basing its decision on the strong expression of federal policy the court found in the legislative history of that section.

Both the Dowell court and the Haynes court cite the purpose of § 1403 and its predecessor, § 503 of the CAA, as support for their holdings. Since the legislative history of § 1403 merely states that § 1403 reenacts § 503 of the CAA without substantial change, many courts have looked to § 503 for aid on the priority question. The history of § 503 reveals a clear legislative intent that priority determination between a federally recorded security interest and the claim of a buyer in the ordinary course of business was to be left to state law. Section 503, as originally proposed, would have granted a federally recorded security interest priority over all other claims to the airplane. This priority determinative language was struck from § 503 by Senate amendment. As expressed by Haynes, the legisla-
tive history of § 503 indicates that § 503 was enacted primarily to simplify the task of recording an airplane security interest and thereby establishing the validity of that interest, not to grant priority to an aircraft security interest so recorded.\textsuperscript{111}

Although the Dowell court disagreed with the Haynes’ court’s finding of legislative intent, it gave only a vague explanation of its determination as to priority under § 1403.\textsuperscript{112} The court was unable to find support for its position in the legislative histories of either § 1403 or § 503.\textsuperscript{113} In fact, the Dowell court’s reasoning ignores the absence of a legislative manifestation of concern with priority.\textsuperscript{114} When a federal statute and a state statute conflict, it “. . . will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so.”\textsuperscript{115} The Dowell court, ignoring this familiar rule, substituted its own interpretation of § 1403 for that of Congress.\textsuperscript{116} Faced with the lack of any evidence of a priority determinative congressional intent in either § 1403 or its history,\textsuperscript{117} the Dowell court should have found that § 1403 does not preempt UCC § 9-307(1).

The resolution of the conflict between the holder of a federally recorded airplane security interest and the buyer of that airplane in the ordinary course of business hinges on the court’s determination of the meaning of § 1403 and its legislative history.\textsuperscript{118} The Haynes court decided that § 1403 and the relevant legislative history cannot be read to preempt UCC § 9-307(1).\textsuperscript{119} Section 1403 and its history support this finding. Dowell recog-
nized that to find for the holder of a federally recorded aircraft security interest, a strong expression of federal intent to protect such a holder by granting his interest priority had to be constructed. The *Dowell* court constructed this intent, but did so by ignoring the real purpose of and policy behind § 1403, which is to provide a central place where airplane security interests can be federally recorded and validated, and nothing more.

**David F. Brandley, Jr.**

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150 3 Cal. 3d at 546, 476 P.2d at 403, 91 Cal. Rptr. at 3.
151 See text accompanying notes 86-89 supra.