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FORUM

TEACHING AVIATION LAW AT THE UNDERGRADUATE LEVEL: A SYLLABUS

J. Scott Hamilton, J.D.

In the face of an increasingly litigious society and intolerant enforcement of administrative regulations, introductory undergraduate aviation law courses are taking on new importance to students and prospective aviation industry employers alike. Graduates who know how to recognize and avoid aviation's legal pitfalls make better employees for air carriers and corporate flight departments. It has been said that "the law is a seamless web," and aviation educators who face the challenge of organizing the teaching of an undergraduate level aviation law course often find themselves entangled in that web.

The following synopsis, which has served the author and his students in the Aerospace Science Department at Metropolitan State College of Denver, is offered as a guide through that web.

The course is divided into five basic topic areas: administrative law, aircraft accidents, aircraft transactions, airports and airspace, and airline labor law. These general topical areas are then broken down into more specific studies.

SECTION I: ADMINISTRATIVE LAW

This is an appropriate starting point for two reasons. First, because the federal government regulates aviation far more pervasively than most industries, aviation professionals must make administrative and operational decisions daily based upon Federal Aviation Regulations (FARs). Second, these regulations establish legal standards of behavior by which an individual, an airline, or a corporate flight department may be tested for negligence in the event of an aircraft accident. This section may be broken down into the following sub-headings: regulatory agencies, Federal Aviation Administration (FAA) enforcement, and aviation medical cases. The following are concepts to be introduced in each of these topics.

Regulatory Agencies

An overview of the administrative agencies most directly involved in regulating the aviation industry, with an examination of the specific role of each including the FAA, National Transportation Safety Board (NTSB), National Aeronautics & Space Administration (NASA), the former role of the Civil Aeronautics Board (CAB) and its sunset under deregulation, the National Mediation Board (NMB), the State Department and the President of the United States, and the International Civil Aviation Organization (ICAO).

FAA Enforcement

Common FAR violations and how to avoid them. Procedures in certificate actions for suspension or revocation of certificates of individuals and aviation businesses, and collection of fines ("Civil penalties") for alleged FAR violations. Rights of the accused, use of the NASA Aviation Safety Reporting System to obtain immunity from sanction, availability of re-examination or remedial training as alternatives to punishment.

Aviation Medical Cases

Health standards and procedures for obtaining FAA aviation medical certification by normal and special issuance processes. Procedures and standards for appeal to NTSB from FAA denial, suspension or revocation of aviation medical certificates. Basic concepts of certification, the "nine specific disqualifying conditions." Certification by special flight tests. Importance of complete truthfulness in filling out the application for aviation medical certificate, and administrative and criminal penalties for failure to truthfully report. Consequences of use of medication and adverse changes in health while holding an aviation medical certificate. Responding to FAA requests for additional medical information or testing.

Section II: Aircraft Accidents

This section examines the workings of civil tort law and techniques available to reduce the risk of liability to aviation professionals and aviation businesses for the consequences of aircraft accidents. Specific topics and suggested contents follow.

Basic Principles of Liability

A tort defined. Intentional torts and negligence distinguished. Specific intentional torts sometimes encountered in an aviation context including battery, assault, intentional infliction of mental distress, false imprisonment, false arrest, trespass, and conversion. Elements of negligence (duty, breach, proximate cause, and injury). Effect of FARs, Airworthiness Directives (ADs), Airmen's Information Manual (AIM), Advisory Circulars (ACs), and opinions of aviation expert witnesses. The "sudden emergency" doctrine, negligence *per se*, the doctrine of *res ipsa loquitur*. Strict liability for defective products and for ultra hazardous activities. Possible defenses, including assumption of risk, contributory and comparative negligence, and application of the humanitarian doctrine of "last clear chance." Concept of vicarious liability of aviation businesses for torts committed by employees within the scope of their employment. Elements of damages including compensatory, exemplary, and punitive damages, and application of the "American Rule" to determine who pays the parties' attorney fees for litigation. Basic pretrial and trial procedures.

Organizing the Business to Limit Liability

Introduction to the primary forms of business organization (sole proprietorship, general partnership, limited partnership, and corporation). Forming and operating a corporation. Use of the corporate form to limit personal liability for accidents and debts of an aviation business. Avoiding application of the "alter-ego" doctrine to reach personal assets. Corporate record-keeping and tax responsibilities. Distinctions between employees and independent contractors.

Aviation Insurance

Aviation insurance as a foreign language. Introducing the roles of agents, brokers, direct writers, insurance companies, underwriters, aviation managers, and adjusters. Basic principles and philosophies of liability insurance, including spreading the risk, minimizing the risk, and protecting the policy. Worker's compensation insurance, unemployment compensation insurance, aviation insurance coverages including aircraft liability and hull coverages, airport liability insurance including premises and hangar-keepers coverage, products liability insurance, prepaid legal services, and loss of license

insurance. Methods of valuation for total hull loss (current market value versus stated value), purposes of use and coverages afforded by each, pilot qualification requirements, and consequences of use for an uninsured purpose or by an unqualified pilot, policy exclusions. Protecting lienholder's interests. Operating under a special flight ("Ferry") permit. Excess liability coverage. Subrogation and aviation non-ownership liability insurance.

Exculpatory Contracts

The use of contracts between aircraft or airport operators and other aviation participants to protect the operator from liability for injuries or death in high risk operations such as motion picture stunt flying, skydiving, air shows, etc.

Airline Liability

Airline liability for personal injury, and baggage and cargo loss or destruction in domestic operations. Common carriers and contract carriers distinguished and legal responsibilities of each. Use of tariffs to limit liability in domestic operations. The "highest degree of care" standard governing common carriers, distinguished from the "reasonably prudent person" standard governing others. Liability for international passengers and cargo under the Warsaw Convention as modified by the Montreal Agreement, including absolute liability, dollar limits on liability, the five defenses to cargo, notice requirements, and the willful misconduct exception.

Government Liability for Aircraft Accidents

Liability of the federal government under the Federal Tort Claims Act (FTCA), as amended, for aircraft accidents involving air traffic controller negligence, erroneous or inadequate weather briefings, airworthiness certification. Personal liability of individual federal employees for aircraft accidents.

Accident Notification and Reporting

Definition of and distinctions between accidents, incidents, and other mishaps for which reports are, or are not, required to be filed with the NTSB. Developing an accident response plan to minimize the consequences of an aircraft accident.

Section III: Aircraft Transactions

This section emphasizes the study of buying, selling, registration, taxation, and leasing of aircraft, as follows:

Buying and Selling Aircraft

Warranties and security interests in aircraft, considering the interplay between the Uniform Commercial Code (UCC) and the Federal Aviation Act. Security interests as an exception to the law of conversion. Obtaining a title search. Possessory liens and releases of liens. Creation and disclaimer of express and implied warranties. Documentation of complete agreement, re-registration, and other filing with FAA Aircraft Registry. State and federal taxation and registration requirements and consequences for failure to pay.

Leasing Aircraft

Leases distinguished from leasebacks. Checklist of items which should be addressed in an aircraft lease. Special considerations applicable to aircraft leaseback.

Section IV: Airports & Airspace

Dealing with the problems of aircraft noise and keeping the airport's approaches clear of obstacles. Use of the power of eminent domain to obtain land and aviation easements through condemnation and payment of just compensation. Inverse condemnation ("Causby") actions. Application of the police power to enact and enforce land use zoning and height zoning restrictions in the vicinity of airports, as well as ordinances limiting aircraft noise. Rights of state and local governments versus the federal government to control airspace use and aircraft noise, showing the interplay between the commerce and supremacy clauses of the Constitution of the United States. Injunctions against public and private airports. Availability of federal matching funds, and FAA airspace and obstruction analyses. Voluntary jet curfews and effective expression of public sentiments.

Section V: Airline Labor Law

Characteristics and procedures of labor relations in the airline industry under the applicable provisions of the Railway Labor Act of 1926 (RLA), including union shops, compulsory mediation, opportunity for binding arbitration, and postponement of right to strike. Representation cases, major

and minor disputes distinguished. The "Kabuki Theater" procedure and potential sanctions for failure to follow prescribed procedures.

J. Scott Hamilton, Esq., is an attorney with 20 years experience, limiting his practice to aviation law. He is an adjunct professor teaching aviation law and risk management at Metropolitan State College of Denver, and adjunct professor of law teaching aviation law at the University of Denver College of Law. He is the author of the new *Practical Aviation Law* textbook, workbook, and teaching materials published by the Iowa State University Press.