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Aviation Law: Cases and Materials

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FORUM*Book Review***AVIATION LAW: CASES AND MATERIALS**

BY ROBERT M. JARVIS, JAMES T. CROUSE, JAMES R. FOX & GREGORY W. WALDEN. DURHAM, NC: CAROLINA ACADEMIC PRESS, 2006. PP. VII/947. USD 110.00. ISBN; 159460-030-9.

AVIATION LAW: CASES AND MATERIALS – TEACHER’S MANUAL

BY ROBERT M. JARVIS, JAMES T. CROUSE, JAMES R. FOX & GREGORY W. WALDEN. DURHAM NC: CAROLINA ACADEMIC PRESS, 2006. PP III/90. N.P.

S.V. (STEVE) DEDMON

Just to clarify my position from the beginning, this is a great book. However, to avoid the very appearance of impropriety I must disclose Robert M. Jarvis was my faculty advisor as a 1L while attending Nova Southeastern University in 1995. I remember our initial meeting over a pizza lunch during which he solicited comments concerning our law school experience up to that point. I do not remember my answer but I believe it included some distain for the law school educational process and probably the professors. Additionally, his wife was a guest lecturer for an international business class I took during the summer of my first year in conjunction with a study abroad program hosted by the law school. Having dealt with the reasons for any prejudicial treatment on my part, I still think it is a great book! It includes a seven page table of contents, a five page table of cases section, 676 pages of text and notes, followed by thirty appendixes (259 pages) and a five page index. The case book is supplemented by a ninety page Teacher’s Manual which provides the user insight into how the cases were selected, edited, and the authors’ opinions regarding the emphasis of the law and the legal conclusions drawn by the court. Regarding the last point, Jarvis, Crouse, Fox and Walden (hereafter, authors) take definite positions which I found myself at times agreeing with and at others disagreeing. However, I never felt they intended to imply theirs was the final authority on the matter. The manual also concisely summarized the various topics and helped clarify some of the issues which got lost in the editing process and in some cases supplied additional background information. Additionally, the manual suggests two methods to teach the material and could provide guidance to those new to the subject or teach as adjunct professors.

Due to the relatively “newness” of aviation law and text on the subject, and I use that term generally, the cases used to introduce a particular subject or make a specific point are, more often than not, current cases. The cases the authors use throughout the entire book are self explanatory regarding the salient points of law they wish to convey and include cases from various levels of the state and federal court system as decided by district judges. As a result, the decisions by the court are the latest and best interpretation of the law and as such are relevant to students and practitioners alike. In United States Supreme Court cases,

the court as is its nature and practice, reviews chronologically and historically the evolution of the law and comes to a final conclusion as to what the law is. By using this approach, the authors have helped the student take the guesswork out of how the court came to the particular conclusion that it did. The result is a clear understanding of the law. I applaud the authors for getting to the point without the agony of the journey, even though I do understand the reason for the journey as law text by nature are written to revel in how the law has evolved which sometimes tends to cloud the law as to its finality.

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Having said that, there will probably come a time as matters take on new complexity, particularly as international issues become more prevalent, that there may be a need for a succession of cases to give a more in depth view of a particular subject area. If the authors should be so inclined, they could include a Supplement, but again, I revert back to what I consider the newness of aviation law and my belief that this area of the law has not progressed to that point. Additionally, as a teaching tool, it has been my experience that students consider Supplements, unless bound in the book, just another item in a book bag which will never see the light of day unless the professor assigns something directly from it. However, for those practicing the law it may be a welcome addition. As I said above, the notes were a great resource of cases and if some of those cases were expanded and put in a Supplement it would be worth the price of publication. The authors do provide the opportunity to do extra research by citing additionally references, but I have found that if it is not in front of them very few students, and even professors myself included, will take the initiative and avail themselves of this information.

Beginning the review of the individual sections, the first thing that got my attention was the length of Chapter 1 which is also the Introduction (105 pages). At first I did not understand why it was so long, but ultimately came to appreciate its length. It was only after stepping back from the text that I realized what the authors were attempting to accomplish. Fortunately, my observation was confirmed when I received the Teacher's Manual and its overview of the authors summary of the inception of flight and its history, sources of law as related to aviation issues past and current, and finally how aviation lawyers practice their profession. Although my perceptions were not point by point aligned with that of the authors, I did get the gist of what the Introduction was attempting to convey.

For those unfamiliar with aviation there is a historical perspective of the inception of flight and is a good overview. I have used Harry Lawrence's, (Lawrence, 2004) and Robert M. Kane's (Kane, 2003) books to teach the history of aviation legislation and found their historical findings and those of this text the same in some areas, different in others, but compatible. This section is chronologically organized and as such is easy and informative reading. The legislative section follows the same chronological format and acquaints the reader with both domestic legislative acts and international conventions. The authors expand the scope by introducing writings addressing the need for regulation of ultralight aircraft (Jack, 1986) an area of aviation possible unfamiliar to many. They

also use the tried and true Note Section as supplemental material and it adds a wealth of general and specific information to the text without being burdensome.

The case law portion of the Introduction begins by introducing liability issues associated with a pioneering balloonist and ends with cases related to the tragedy of 9/11. This is the only section where the authors use cases which are "old," for obvious reasons. Throughout the rest of the book it reflects the most current cases and at times there are references to relevant material which was being decided as the book was in the hands of the publisher. The only distraction, which may be more of a personal preference, was the positioning of the notes. They are at the end of each section and refer back to the cases which at times could be a dozen or more pages prior to the notes section itself. For me, there were too many instances where I got bogged down in a case, moved on to another and then another and forget the legal issue which the notes ultimately address. Thus, I would prefer to see the notes relating to a case immediately thereafter.

Chapter 2, as do all the chapters, begins with a short concise overview. The chapter itself (211 pages) deals with Aircraft and is broken down into sections. Beginning with an article detailing purchasing and sales of aircraft it articulates the degree of detail necessary in the contract language to properly defend both sides involved in the agreement and ends with properly registering an airplane and assuring there are no clouds on the title through a search of the Federal Aviation Administration (FAA) registry (Wieand, 1997). The chapter then discusses such topics as FAA jurisdiction as associated with airshows and experimental aircraft in Ickes v. Federal Aviation Administration (2002), the intricacies of airplane registration, especially when foreign countries are involved as in Air One Helicopters, Inc. v. Federal Aviation Administration (1996), recordings in Lewistown Propane Company v. Ford (2002), Creston Aviation Inc. v. Textron Financial Corporation (2005), and Koppie v. United States (1993). The later exploring any liability the FAA may or may not have in registry issues. This section is actually a review of those issues learned in property. The problem(s) at the end of the each section(s) are thought provoking and could be used as discussion material or as research outside the classroom. The Teacher's Manual is a definite help as it provides information specific to the problems to those not familiar with the issue and cited reference case.

Section C cases details state taxes on jet fuel and their relation to the Commerce Clause, the Federal Aviation Act, and international conventions. The arguments in Wardair Canada Inc. v. Florida Department of Revenue (1986) and American Airlines Inc. v. Johnson (2002) show the peculiarity of aviation issues due to the obvious mobility of airplanes and their use on an intra and interstate basis. Tort liability is discussed in Section D and involves manufactures negligence, products, part, and strict liability. It is here the students should get a real sense for the vastness of liability, or opportunity, depending on one's perspective concerning liability faced by aircraft manufactures and part suppliers. Defenses to liability are the topic in Section E and include some which may be new and one which should be familiar. The new ones would include the Federal Aviation Act of 1958 the General Aviation Revitalization Act of 1994, the Government Contractor Defense (Boyle v. United Technologies, 1998), commonly referred to as the Boyles Defense)) and the Foreign Sovereign Immunities Act of 1976. The tried and sometimes true disclaimer defense is the one the students would probably be already familiar. One of two other defenses the authors may wish to explore in the future is negligence per se from McGee v. Cessna Aircraft Co (1983). The other is the hurdle plaintiffs' lawyers face in Florida stemming from the 1999 Tort Reform Act and similar legislation passed in Texas in 2003 (Barks, 2006) as related to jury instructions, which is another take on the Government Contractor Defense (Barks, 2006).

The last section looks at Venue and Choice of Law issues, which I believe will help put practicality to legal concepts, which in law school seem to get compartmentalized in subjects like civil procedure or federal jurisdiction even with the "extended treatment" (Jarvis et. al, 2006) they may receive. The cases in this section highlight how the courts deal with forum nonconveins and choice of laws which is, as is the case in major aircraft disasters with multiple victims, a major point of contention amongst the litigants.

Chapter 3 under the broad caption of Airmen covers pilots, mechanics, and flight attendants. The authors also introduce the Railroad Labor Act of 1926 (RLA) bringing it to a total of 125 pages. After the number of issues and pages in Chapter 2, this Chapter is easier reading. It is also easier to understand since the subjects are actually people we relate to when flying and includes recognizable commercial aviation activities. The issues relating to pilots are varied and numerous and include pilot responsibilities for injuries resulting from turbulence, intoxication, owner's

vicarious liability, assumption of the risk, and basic airmanship. I did feel the Coleman case was out of place and more applicable to Chapter 2. Note 2 of this section appeared to leave out the National Transportation Safety Board's (NTSB) appellate role should a party feel an error has been made by a NTSB administrative law judge (49 C.F.R. 821.47(a)) after which either party could appeal the Board's decision to the U.S. Court of Appeals (49 C.F.R. § 821.64). The cases involving flight attendants include employment discrimination and include specifics related to weight, age, race, religion, sexual harassment. Mechanics are discussed under the collective bargaining section and includes analysis the RLA. In the future I would like to see the RLA expanded upon as it has had historical and legal ramifications and is still major legislation upon which airlines are still governed as air carriers face merger and buyout as represented by Airline Pilots Association International v. Eastern Air Lines (1988). The Florida Bar lists this case as suggested reading in preparation for becoming Board Certified in Aviation Law. I also suggest there be at least a mention of the Administrative Procedures Act as it is foundational to enacting Federal Air Regulations.

Passengers are the topic of Chapter 4 and its 143 pages. As most people have experience in this area this section is also easy reading. The authors differentiate passengers to those domestic and international and I feel for good reason as the laws are so diverse. The eight cases cover ticket pricing, privacy, bumping of passengers from flights, irate passengers, passengers who face possible discrimination, baggage recovery and recovery for physical injuries. Although this is a simplistic overview of this chapter the cases are significant and gives an adequate synopsis of situations which students have either read about or have been involved in which will help reinforce the learning objectives. As referred to above, the chapter also introduces additional federal laws which are specific to international flight of which few students understand the ramifications, or actually the remedies, and will help them see beyond the cause of action. One area upon which the authors may wish to speculate in the future is first and fourth amendment rights associated with biomedical scanning of passengers on international flights and the ramifications on health issues or ultimately national security. The problem at the end of this section always sparks a spirited conversation in class as I related what the courts have concluded constitutes an accident under the Warsaw Convention, as articulated in Wallace v. Korean Air (2001).

Cargo is the title of Chapter 5, comprising 67 pages. The chapter is subdivided into Suits Against

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Carriers, which is further subdivided into Fair Opportunity, Notice, and Damages. Lost watercolor paintings, dead baby chickens, and the disappearance of paintings from a warehouse are the focus of the cases in this section. Here the students will see the fine print and the detail therein is a vital part of the legal profession. Part of the case information overlaps, such as the issue of notice, but it is a byproduct of the emphasis the authors have chosen. The cases under Notice are self explanatory. Likewise the Damages section is clear and there is a refresher concerning foreseeability as discussed in "that venerable English chestnut case" Hadley v. Baxendale (1854). The last major subdivision is Suits Against Third Parties and is a bit tedious; however, at the risk of sounding redundant, it is not only the focal point of the cases which is important but the collateral topics as well, and to think it took me reviewing a book to finally learn this may have been the point of having to read all those cases in law school. It is still tedious and depending on how one structures their classes and their emphasis on the issues these cases could be consolidated to stem the dreariness.

Chapter 6 gets us out of the airplane and plants us firmly at the Airport in 129 pages. Here the authors' overview sums it up the best. The chapter is broken down to airport construction, use, security, and air traffic control (Jarvis, et. al 2006). The section on Construction brings us back to eminent domain and revisits United States v. Causby (1946) then touches on federal funding, environmental concerns, and ultimately reverts back to eminent domain and condemnation by giving an example of how the court looks at and determines valuation. Airports Use and the effects on a city due to noise, traffic congestion, and direct and indirect user fees are the focus in this section. It also gives a good overview of the complexity and diversity of concerns local governments deal with regarding aviation related matters. A couple of the cases in this section discuss Equal Protection and the Commerce Clause as related to air commerce, which, I believe, will practically reinforce students' understanding in these areas. The Air Traffic Control (ATC) portion of this section begins by looking at age discrimination and mandatory retirement, and actually touches historically on [the] Professional Air Traffic Controllers (PATCO). Abrisch V. United States (2004) and Lakomy v. United States (2003) looks at ATC and their liability when air traffic they are handling are involved in accidents. These cases emphasize that the federal government under the Federal Torts Claim Act (FTCA) is

actually the defendant, based on the acts of the ATC who are acting as their agents, which to some students may be new concept. Due to the significance of [the] FTCA I would suggest an in depth look at the specifics of [the] FTCA so students can see the specificity and under what circumstances the federal government can be a named party. For me, Abrisch was more than just another case in a case law book. It was with mixed emotions that I read this case. I knew the non flying attorney who was killed as he was a member of the church I attended and was actively involved in the singles ministry in which I was a leader. The attorneys who represented his estate were personal friends and I also knew the firm that represented one of the other deceased estates. The mixed emotions element were involved, as like the authors, I too believed the percentage of liability afforded the government was too high. There is one final subsection dealing with Concessionaires, and although it was informative and I understand its inclusion as it leaves no topic unexplored dealing with airports, it did not seem necessary.

For a base aviation law text this book is rock solid. The authors have taken a fresh systematic approach as they have addressed legal issues faced by those involved in practicing and teaching aviation law. I believe they have done it well and I commend them for their efforts. Despite their efforts, some academics and practicing lawyers may believe it includes too much or too little material in certain areas, or does not include their favorite case as related to a specific area. However, this book gives a student a broad overview of aviation law without being over burdensome and does so by injecting aviation reality, practicality, and humor along the way. I would be negligent if I failed to mention each Chapter begins with the comic strip *Sherman's Lagoon* and the text has several references to episodes of *Seinfeld*.

Aviation is a fast paced, invigorating, adrenalin rush, sometimes frightening environment and not just for those of us who fly! This book takes those characteristics and attempts to transfer them to those who want to be involved as legal professionals. For those teaching Aviation Law in a full time or adjunct capacity I *highly* recommend (is that like *strenuously* objecting to being overruled?) you consider this text as the basis for your course. I believe you and your students would be the beneficiaries of its instructional value and insightful commentary. It is also a great source of reference material and would be a welcome addition to one's legal library.

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