

**Aviation Law**  
**Law 151-001, 2 credits**  
**Syllabus – Fall 2023**  
**Monday 8:10 to 10:10 PM**  
**Adjunct Professor Gregory S. Walden**  
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**Instructor Background:** Adjunct Professor Gregory S. Walden has taught Aviation Law at the Scalia Law School since 1998. Mr. Walden is a co-author of *Aviation Law – Cases and Materials* (2006) and *Eyes to the Skies: Privacy and Commerce in the Age of the Drone* (Cato 2021). After graduating *magna cum laude* from the University of San Diego School of Law in 1980, he clerked for the U.S. Court of Appeals for the District of Columbia, first as a court law clerk and then as a clerk to Judge Robert H. Bork. Mr. Walden served in several positions in the Justice Department before becoming Chief Counsel of the Federal Aviation Administration in 1988. He subsequently served as Associate Counsel to President George H.W. Bush and Member of the Interstate Commerce Commission. He is now a Partner with Dentons Global Advisors. He is Aviation Counsel for the Small UAV Coalition. He has also served as Chair of the Stakeholder Consultation Body to the Joint Authorities for Rulemaking on Unmanned Systems (JARUS). In addition to teaching Aviation Law, Mr. Walden has also taught a course in Automated Vehicles Law each summer since 2019.

**Course Materials:** The casebook is *Aviation Law -- Cases and Materials* (Carolina Academic Press 2006). Other materials will be available over The West Education Network (TWEN). Recent court decisions not placed on TWEN may be accessed through Westlaw. Reading assignments for each class are provided below. This list may be revised during the course, based on any new developments.

**Learning Outcomes:** Students will receive an introduction into all major aspects of aviation law, with emphasis placed on government regulation of aircraft (including drones), airlines, airports, and airline personnel. In particular, students will gain a basic understanding of the structure and forms of domestic and international aviation law.

This course will also expose students to the basics of administrative law in the context of DOT and FAA rulemakings and adjudications. This course will also introduce students to several Constitutional provisions, such as the Commerce Clause, the Supremacy Clause, the Takings Clause, the First Amendment, the court-recognized right to travel and the court-created dormant Commerce Clause. Students will learn the basics of antitrust law and environmental laws as they relate to aviation and airports.

**Instructor expectations and course structure:** Student participation is encouraged, both questions and comments. Students are expected to have read the materials in advance of the class.

**Grading:** The final exam will be 100% of your grade; you will also be eligible for a one-third-grade increase (e.g., “B” to “B+”) based on substantial class participation and attendance. The written exam will likely last three hours and consist of a mix of short answer and essay questions.

**Course Description:** The class will examine current aviation industry controversies such as –

**Safety:** *What lessons should be learned from the investigations into the two [Boeing 737 MAX accidents](#)? What is the proper relationship between the FAA and airlines with respect to type and airworthiness certification of aircraft? Are the FAA’s inspection, oversight, regulatory & certification programs in need of improvement?*

*How is the FAA integrating [unmanned aerial systems – drones](#) – into the National Airspace System? What authority do State and local governments have to address trespass, privacy and nuisance concerns drones may raise? How will the Federal, State, and local governments accommodate [Advanced Air Mobility](#) (air taxis carrying passengers and property)*

**Economic regulation:** *What is the proper U.S. government response to: consolidation of the industry; [poor treatment of passengers](#), including tarmac delays, cramped space, refunds for flights not taken, and a lack of transparency in fares and fees?*

*Does the deregulatory model from 1978 still work with a consolidated industry . . . or with the airline industry in a [post-pandemic world](#)?*

**Security:** *What is the proper balance between national security interests and the freedom to travel without harassment and inconvenience? What is [the right to travel](#)?*

**Course schedule and reading assignments below:**

### **Course schedule and reading assignments**

#### **[Introduction and sources of aviation law \(August 21\)](#)**

- Aviation law in flux? What may be shifting as a result of: the Boeing 737 MAX fatal accidents; new entrants into the aviation sector; airline responsibilities and passenger rights post-COVID pandemic; Congress debating a five-year FAA reauthorization bill.

[Casebook Chapter 1 pages 1-14; pp. 20-23 and notes 4-6 \(pp. 26-29\)](#)

*FAA Airworthiness Directive: The Boeing Company Airplanes, 85 Fed. Reg. (Aug. 6, 2020) (TWEN)*

*KNKT Lion Air Accident Report, pages 174-215 (TWEN)*

- History and structure of U.S. regulation of domestic and international aviation; sources of aviation law (FAA, DOT, NTSB, TSA)

*Casebook Chapter 1 pages 18-20, and notes 1-3 (pp. 23-26)*

- Overview of DOT statutory authorities and DOT certification and regulation of air carriers

### ***International aviation (Chapters 1 & 3) (August 21 & 28)***

- International aviation law: Chicago Convention; the Freedoms; bilateral agreements; ICAO; “Open Skies;” cabotage; foreign ownership; right of establishment; the US-EU agreements

*The Freedoms (TWEN)*

- International code-sharing and antitrust immunity
- Current Open Skies issues

*Appendix 1 (Articles 1 & 2); Appendix 3 (Articles 1-7, 9, 33, 37, 38, 84, 87-88); Appendix 4 (Article 1); Appendix 5 (Article 1); Appendix 30 (Articles 2, 3, 8, 10, 11, 12 & Annex I)*

*US-EC Agreement 2008 (Articles 1-4, 6-8, 10, 13, 20-26, Annex 3, 4) (TWEN), US-EC Stage 2 Agreement 2010 (pages 8-9, 12) (TWEN)*

### ***No class Labor Day September 4***

#### ***Aircraft (Chapter 2) (September 11 & 18 & 25)***

- Scope of FAA’s authority over aviation safety  
*Flyers Rights Education Fund v. FAA (D.C. Cir. 2017) (TWEN)*

- FAA aircraft registration, certification, and regulation

*Casebook Chapter 2 pages 107-124 and notes 1-8 (pp. 126-29), and Appendix 3 (Articles 17-18), and Appendices 6, 28, and 29 (only as discussed in class – no need to read ahead of class)*

- Key concepts in commercial transportation, general aviation and the “in-betweens”  
*FlyteNow, Inc. v FAA, 80 F. 3d 882 (D.C. Cir. 2015)*

- Federal Aviation Act preemption and other defenses against liability  
*Sikkellee v. Precision Airmotive Corp, 822 F.3d 680 (3d Cir. 2018) (TWEN)*

*Casebook Chapter 2 pages 183-188 and notes 4-10 (pp. 196-97); Casebook Chapter 3 pages 240-247*

- Unmanned aircraft systems (drone) regulation & Advanced Air Mobility

*FAA Fact Sheet (December 2015) (TWEN)*

*Singer v. City of Newton, 284 F.Supp.2d 125 (D. Mass. 20117) (TWEN)*

*Brennan v., Dickson, 45 F. 4<sup>th</sup> 48 (D.C. Cir. 2022) (TWEN)*

### ***Airline personnel (Chapters 2 & 3)***

#### ***(September 25 and October 2)***

- APA rulemaking and adjudication – reprise of general principles

- FAA certification and safety regulation of air carriers, aircraft, and airmen & judicial review; FAA enforcement & NTSB appellate jurisdiction & judicial review  
*Casebook Chapter 3 pages 224-231, and notes 2-5, pp. 253-254; pages 258-260 and 271-275, notes 1-3 (pp. 275-76)*

- Civil rights laws and criminal sanctions applicable to airline personnel  
*Casebook Chapter 3 pages 276-285, notes 1-3 (pp. 318-320)*

### **Accident investigation and litigation (Chapter 4) (Tuesday October 10)**

- Domestic accident investigation and litigation – NTSB and Federal Tort Claims Act  
*Casebook Chapter 6 pages 644-664 and notes 3-8 (pages 665-668)*

- International accident litigation (Warsaw and Montreal Conventions)  
*Casebook Chapter 4 pages 425-463 (omit case at pp. 429-437), and notes 1-10 (pp. 479-483) and Problem 16 (page 483), Appendices 2, 8, 13 15, 23, 24, 25, 26 (only as discussed in class)*

### **Airlines and passengers: antitrust, competition (Chapters 3, 4, & 6) (October 16)**

- Competition and the antitrust laws: barriers to entry and anticompetitive conditions
- Antitrust laws and anticompetitive conduct  
*Casebook Chapter 4 pages 343-366, notes 1-3 (pp. 410-415)*

- DOJ and DOT authority over mergers, acquisitions, and code-share agreements  
*United States v. US Airways Group, Inc., 2014 WL 1653269 (D.D.C. 2014)*

- Administrative Procedure Act rulemaking and adjudication – general principles  
**Airlines and passengers: consumer protection (Chapters 3, 4 & 6) (October 23)**

- DOT enforcement and adjudication
- Consumer protection – unfair and deceptive practices & unfair methods of competition  
*Casebook Chapter 4 pages 376-382*

- Regulation of travel agents, online travel agents and metasearch sites
- Tarmac delays
- Civil rights protections for passengers: section 40127 and Air Carrier Access Act  
*Casebook Chapter 4 pages 395-400, note 15 (pages 420-421)*

### **Airlines and passengers: ADA preemption; labor & bankruptcy law (Chapters 3 & 4) (October 30)**

- Airline Deregulation Act preemption  
*Casebook Chapter 4 pages 366-376 and 382-394, notes 9-13 (pp. 416-420) and Problem 15 (page 425)*

- Labor law – Railway Labor Act  
*Casebook Chapter 3 pages 320-331 and 337-340 (omit TACA case) and notes 1-6 (pp. 340-342)*

- Bankruptcy law  
**Aviation security and the Constitution (Chapters 1 & 6) (November 6)**

- International conventions on hijacking, sabotage and other crimes and acts of terrorism

*Casebook Chapter 1 pages 52-61, 64-65 (Executive Order), and notes 1-4 (pp. 67-69)*

*Casebook Appendix 10 (Articles 1-16), Appendix 12 (Articles 1-9), Appendix 14 (Articles 1-8), Appendix 19, Appendix 20 (Articles I-II), Appendix 21*

- TSA regulation of air carriers and airports
- 4<sup>th</sup> and 5<sup>th</sup> Amendment challenges to TSA regulation and policies; the right to travel  
*Latif v. Holder*, 28 F. Supp. 3d 1134 (D. Or. 2014); 2016WL1239925 (D. Ore.)

*Ibrahim v. Department of Homeland Security*, 62 F. Supp. 3d (N. D. Cal. 2014)

- Airports and the First Amendment

*Casebook Chapter 6 pages 621-626 and note 1 page 634*

### ***Airports (Chapter 6) (Nov. 13 and 20)***

- Takings Clause and relationship between Federal and local governments  
*Casebook Chapter 6 pages 551-556 and notes 1-2 (pp. 582-583) and Problem 22 (page 620)*

- Airport expansion; funding of construction & improvements; noise abatement authority

*Casebook Chapter 6 pages 556-562*

- FAA safety regulation of airports and regulation of hazards to air navigation

*Casebook Chapter 6, page 584 n.5*

- Statutory and contractual grant assurances
- Federal environmental review – noise abatement and NEPA – & judicial review  
*Casebook Chapter 6 pages 562-573 and notes 3-7 (pp. 583-585); Appendix A to 14 CFR Part 150 (TWEN)*

*City of Phoenix v. Huerta* (D.C. Cir. 2017)

- Airport proprietary powers

*Casebook Chapter 6 pages 586-603 and notes 1-2 (pp. 617-618)*

- Airport rates and charges and state taxation (dormant Commerce Clause; Anti-Head Tax Act; DOT policy; Passenger Facility Charges) & judicial review

*Casebook Chapter 6 pages 603-617 and notes 3-5 (pp. 618-620)*

- FAA and DOT administrative processes to challenge airport rates and access restrictions