

Automated Vehicles Law – Driverless Cars & Drones
Law 247-001, 2 credits
Syllabus – Summer 2023
Mon. & Wed., 6:00 – 7:50 pm
Adjunct Professor Gregory S. Walden
gregory.walden@dentonsglobaladvisors.com

Instructor Background: Adjunct Professor Gregory S. Walden has taught Aviation Law at the Scalia Law School since 1998 and Automated Vehicles Law since 2019. This marks the fifth summer class in Automated Vehicles Law. 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 on 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).

Course Materials: There is no textbook for this class – none exists at this time. Materials will be placed on TWEN, and 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: (1) Students will receive an introduction into all major aspects of automated vehicles law, covering both drones and self-driving cars, from the highly automated to the autonomous. (2) Students will gain a basic understanding of the structure and forms of Federal statutory and administrative law and will review tort law principles of negligence and strict liability. (3) This course will also expose students to the basics of the law administered by U.S. DOT, NHTSA, and FAA, in the context of rulemakings and adjudications. (4) This course also introduces students to several Constitutional provisions, such as the Commerce Clause, the Supremacy Clause, the Takings Clause, the court-recognized right to travel and the court-created dormant Commerce Clause, and the Fourth Amendment.

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.

May 22 and 24 – Federal, State, and local responsibilities over transportation

- *US DOT and modal administrations – different certification models*
- *State and local authorities – differences in allocation of responsibility between air and surface transportation*
- *Constitutional law provisions shaping transportation law*
 - *Commerce Clause/dormant Commerce Clause*
 - *Spending Clause*
 - *Takings Clause*
 - *Supremacy Clause – express and implied preemption*
 - *First Amendment*
 - *Fourth Amendment*
 - *Right to travel*

State and local police powers and private property rights

- *Private property rights and public right to transit airspace*
- *Police powers: Zoning, land use, and condemnation*

United States v. Causby, 328 U.S. 256 (1946)

May 31 and June 5 & 7 — Unmanned aircraft systems – drones

- *DOT, FAA rules*
- *Express and implied preemption*
- *Congressional action*

FAA, Office of Chief Counsel, State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet (Dec. 17, 2015) (TWEN)

Huerta v. Pirker, N.T.S.B. Order No, EA-5730, 2014 WL 8095629

FAA, Busting Myths about the FAA and Unmanned Aircraft (Feb. 26, 2015)(TWEN)

Brennan v. Dickson, 45 F.45 F.4th 48 (D.C. Cir. 2022)

Huerta v. Haughwout, 2016 WL 3919799 (D. Conn.)

Singer v. Newton, 284 F. Supp.3d 125 (D. Mass. 2017)

Sikkelee v. Precision Airmotive Corp., 907 F.3d 701 (3d Cir. 2018), cert. denied (2020)

National Press Photographers Association, et al. v McCraw, et al., 504 F. Supp. 2d 568 (W.D. Tex. 2022) and 2022 WL 939517 (two decisions)

June 12 -- Unmanned aircraft systems -- State tort law

- *State and local laws*

Boggs v. Merideth, 2017 WL 1088093 (W.D. Ky.)

Restatement (Second) of Torts §§158, 159 (trespass and aerial trespass) (pages 277-284; 652A & 2B (invasion of privacy and intrusion upon seclusion) (pages 376-380); 821A-E, 822 (public and private nuisance) (pages 85-94, 100-105, 108-115)(TWEN)

Uniform Tort Law Relating to Drones (TWEN)

American Law Institute Restatement (Fourth) of Property -- proposed “trespass-by-overflight” provision (TWEN)

Selected provisions in State law (TWEN)

June 14 and 21 – Automation of cars and trucks

- *SAE International Automation Levels*
- *US DOT, NHTSA, FMCSA*
 - *Certification & Exemptions*
 - *NHTSA and FMCSA preemption – case law*
 - *NHTSA and FMCSA rulemakings*
- *State and local laws – rules of the road, and more?*
- *Tesla, NTSB, and NHTSA*

Automated Vehicles 4.0, Ensuring American Leadership in Automated Vehicle Technology (Jan. 2020) (TWEN) (selected pages)

NHTSA Notice Regarding Applicability of NHTSA FMVSS Test Procedures, 85 Fed. Reg. 83143 (Dec. 21, 2020)

NHTSA Standing General Order 2021-01—Incident Reporting for Automated Driving systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS)(TWEN), as amended Aug. 5, 2021

NHTSA Final Rule – Occupant Protection for Vehicles with Automated Driving Systems, 87 Fed. Reg. 18560 (Mar. 30, 2022)

June 26 – Congressional action on driverless vehicles

- *S. 1885 (AV Start Act) (115th Congress) (TWEN)*
- *Why Congress has failed to enact a bill*
- *Electric vehicle provisions in Bipartisan Infrastructure Act and Inflation Reduction Act*

June 28 and July 3 – Automated cars – Tort law

- *Negligence & strict liability for defective products*
- *How has vehicle automation affected tort law to date?*
- *How might tort law evolve to address autonomous cars and trucks?*
- *Who are defendants?*
- *Invasion of privacy*

In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation, 978 F.Supp.2d 1053 (C.D. Cal. 2013)

Restatement (Second) of Torts §402A (pages 347-358) (TWEN)

Restatement (Third) of Torts §§ 1-5 and 15 (TWEN) (pages 5-9, 14-40, 111-115, 120-123, 130-136- and 231-233)

July 5 – Government operation of automated vehicles

- *Tort liability – Federal Tort Claims Act & State laws*
- *4th Amendment – Invasion of privacy – search and seizure*

California v. Ciraolo, 476 U.S. 207 (1986)

Florida v. Riley, 488 U.S. 445 (1989)

Long Lake Township v. Maxon, 2021 WL 1047366 (Mich. Ct. App.), *vacated and remanded*, 973 N.W. 2d 615, 2022 WL 4281509 (Sept. 15, 2022) (on remand)

Federal Tort Claims Act, 28 U.S.C. §§1346, 268 (TWEN)

July 12 – Particular issues of law and policy; review class and exam preparation

- *Spectrum -- V2V, V2X*
- *Advanced Air Mobility (pilotless air taxis)*
- *Ethics – the trolley problem*
- *How might artificial intelligence change the legal liability framework?*
- *Cybersecurity*

B. Smith, *The Trolley and the Pinto: Cost-Benefit Analysis in Automated Driving and Other Cyber-Physical Systems*, 4 Tex. A&M L. Rev. 197 (2017) (TWEN)