

Reading(s) & Supplemental Material: 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.

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 sixth 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 DGA Group Government Relations LLC. He is Counsel to the Small UAV Coalition.

COURSE DESCRIPTION & OBJECTIVES

- (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 fully 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 & PARTICIPATION

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.

COURSE SCHEDULE & ASSIGNED READINGS

Date	Class Topic	Assignment(s)
<p>May 19 & May 21</p>	<p>Federal, State, and local responsibilities over transportation</p> <ul style="list-style-type: none"> • <i>US DOT and modal administrations – different certification models</i> • <i>State and local authorities – differences in allocation of responsibility between air and surface transportation</i> • <i>Constitutional law provisions shaping transportation law</i> <ul style="list-style-type: none"> ○ <i>Commerce Clause/dormant Commerce Clause</i> ○ <i>Spending Clause</i> ○ <i>Takings Clause</i> ○ <i>Supremacy Clause – express and implied preemption</i> ○ <i>First Amendment</i> ○ <i>Fourth Amendment</i> ○ <i>Right to travel</i> <p>State and local police powers and private property rights</p> <ul style="list-style-type: none"> • <i>Private property rights and public right to transit airspace</i> • <i>Police powers: Zoning, land use, and condemnation</i> 	<p><i>United States v. Causby, 328 U.S. 256 (1946)</i></p>
<p>May 28, June 2, June 4</p>	<p>Unmanned aircraft systems – drones</p> <ul style="list-style-type: none"> • <i>DOT, FAA rules</i> • <i>Express and implied preemption</i> • <i>Congressional action</i> 	<ul style="list-style-type: none"> • <i>FAA, Busting Myths about the FAA and Unmanned Aircraft (Feb. 26, 2015)(TWEN)</i> • <i>Huerta v. Pirker, N.T.S.B. Order No, EA-5730, 2014 WL 8095629</i> • <i>FAA, Office of Chief Counsel, State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheets (Dec. 2015; July 2023) (TWEN)</i> • <i>Huerta v. Haughwout, 2016 WL 3919799 (D. Conn.)</i> • <i>Singer v. Newton, 284 F. Supp.3d 125 (D. Mass. 2017)</i> • <i>Brennan v. Dickson, 45 F.45 F.4th 48 (D.C. Cir. 2022)</i> • <i>Sikkelee v. Precision Airmotive Corp., 907 F.3d 701 (3d Cir. 2018), cert. denied (2020)</i>

		<ul style="list-style-type: none"> • <i>National Press Photographers Association, et al. v McCraw, et al., 90 F.4th 770 (5th Cir. 2024)(TWEN)</i>
June 9	<p>Unmanned aircraft systems -- State tort law</p> <ul style="list-style-type: none"> • <i>State and local laws</i> 	<ul style="list-style-type: none"> • <i>Boggs v. Merideth, 2017 WL 1088093 (W.D. Ky.)</i> • 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 -- “trespass-by-overflight” provision (TWEN) • Selected provisions in State law (TWEN)
June 11 & 16	<p>June 11 & 16 – Automation of cars and trucks</p> <ul style="list-style-type: none"> • <i>SAE International Automation Levels</i> • <i>US DOT, NHTSA, FMCSA</i> <ul style="list-style-type: none"> ○ <i>Certification & Exemptions</i> ○ <i>NHTSA and FMCSA preemption – case law</i> ○ <i>NHTSA and FMCSA rulemakings</i> • <i>State and local laws – rules of the road, and more?</i> • <i>Tesla: NTSB and NHTSA investigations</i> 	<ul style="list-style-type: none"> • <i>Automated Vehicles 4.0, Ensuring American Leadership in Automated Vehicle Technology (Jan. 2020) (TWEN) (selected pages)</i> • <i>NHTSA Notice Regarding Applicability of NHTSA FMVSS Test Procedures, 85 Fed. Reg. 83143 (Dec. 21, 2020)</i> • <i>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</i> • <i>NHTSA Final Rule – Occupant Protection for Vehicles with Automated Driving Systems, 87 Fed. Reg. 18560 (Mar. 30, 2022)</i>
June 18	<p>June 18 – Congressional action on driverless vehicles</p> <ul style="list-style-type: none"> • <i>S. 1885 (AV Start Act) (115th Congress) (TWEN)</i> • <i>Why Congress has failed to enact a bill</i> • <i>Fate of electric vehicle provisions in Bipartisan Infrastructure Act and Inflation Reduction Act in the 119th Congress</i> 	

	<ul style="list-style-type: none"> • What to expect from Trump Administration and 119th Congress 	
June 23 & 25	<p>June 23 and 25 – Automated cars – Tort law</p> <ul style="list-style-type: none"> • <i>Negligence & strict liability for defective products</i> • <i>How has vehicle automation affected tort law to date?</i> • <i>How might tort law evolve to address autonomous cars and trucks?</i> • <i>Who are defendants?</i> • <i>Invasion of privacy</i> 	<ul style="list-style-type: none"> • <i>In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation</i>, 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)
June 30	<p>Government operation of automated vehicles</p> <ul style="list-style-type: none"> • <i>Tort liability – Federal Tort Claims Act & State laws</i> • <i>4th Amendment – Invasion of privacy – search and seizure</i> 	<ul style="list-style-type: none"> • <i>California v. Ciraolo</i>, 476 U.S. 207 (1986) • <i>Florida v. Riley</i>, 488 U.S. 445 (1989) • <i>Long Lake Township v. Maxon</i>, 2021 WL 1047366 (Mich. Ct. App.), <i>vacated and remanded</i>, 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 2	<p>Particular issues of law and policy</p> <ul style="list-style-type: none"> • <i>Spectrum -- V2V, V2X</i> • <i>Advanced Air Mobility (air taxis)</i> • <i>Ethics – the trolley problem</i> • <i>How might artificial intelligence change the legal liability framework?</i> • <i>Cybersecurity</i> 	<ul style="list-style-type: none"> • B. Smith, <i>The Trolley and the Pinto: Cost-Benefit Analysis in Automated Driving and Other Cyber-Physical Systems</i>, 4 Tex. A&M L. Rev. 197 (2017) (TWEN)
July 7	Review class and exam preparation	

ACADEMIC STANDARDS & COURSE POLICIES

Academic Integrity:

Each student at Antonin Scalia Law School (“Scalia Law”) is expected to behave honorably and with the highest personal integrity toward other law students, toward the law school and university, and toward other members of the legal profession.” (Preamble to the Honor Code.)

The Honor Code prohibits a student from lying, cheating, or stealing, to include plagiarism and the use of any prohibited resource in an exam, coursework, or course paper. The full Honor Code can be accessed here:

https://www.law.gmu.edu/academics/academic_standards

Recording Class Sessions:

Recording of class sessions by any means is prohibited. See AR 4-2.2: “Unless expressly permitted in writing by an instructor, no portion of a class session or an examination may be preserved by means of a recording device (such as an audio recording device or a camera).”

Use of Technology:

Student may use laptops or iPads for class. Cameras must be turned on for the length of each class.

University Email:

Students must use their Mason email account to receive university or law school information, including communications related to this class.

Use of Generative Artificial Intelligence (GAI) in Academic Work:

Use of Generative Artificial Intelligence in the drafting or writing of papers or any other course work or assignments in this class is prohibited. According to AR 4 -3: “Generative artificial intelligence (GAI) is a type of artificial intelligence that uses algorithms to generate new content, such as text or images, based on the data it has been trained on. For purposes of this regulation, GAI is not intended to encompass legal research databases and word processing applications that, while incorporating AI - based elements or enhancements, do not generate novel text.” Use of GAI in a course that prohibits the use of GAI, constitutes an academic integrity violation.

Use of Electronic Text Books During Exams:

Students are permitted one laptop computer for exam taking purposes. Additional laptop computers or any other electronic data storage devices are not allowed in an exam room, unless permitted by the course instructor's written exam instructions. Electronic text books (e-books) may be used during exams that are designated as open book by the instructor and the instructor allows text books to be used during the exam and allows access to a student's computer files during the exam (open exam). E-books may not be used in exams where the instructor does not allow students to access their computer files during the exam (secure exam) even if the instructor permits access to text books. If the instructor has blocked access to the internet or computer files, you must bring a hard copy of the allowed text book(s) you wish to consult. Students will need to borrow or otherwise

locate a hard copy of the e-book or print resources needed from the e-book to take into the exam room. The instructor determines the length of the examination and whether or not it is secure or open and what, if any, study materials are permitted during the exam. Students are responsible for adhering to the instructor's standards for all examinations, which are included in the examination materials.

Accommodations for Students with Disabilities:

Disability Services at George Mason University is committed to upholding the letter and spirit of the laws that ensure equal treatment of people with disabilities. Disability Services implements and coordinates reasonable accommodations and disability-related services that afford equal access to university programs and activities. For further information and to register for services, please refer to <https://ds.gmu.edu/law-school/>, or call (703) 993-2474.

Name and Pronoun Use:

Students are encouraged to share their name and gender pronouns with me and indicate how best to address them in class and via email. Further information can be obtained at GMU's Chosen Name and Pronoun Policy, <https://universitypolicy.gmu.edu/policies/chosen-name-pronouns-policy/>

Covid Protocols:

Please refer to GMU's *Safe Return to Campus* web site for information regarding GMU's safety protocols. The site can be accessed at: <https://shs.gmu.edu/services/covidservices/>.

Notice of Mandatory Reporting of Sexual Assault, Sexual Harassment, Interpersonal Violence, and Stalking:

As a faculty member, I am designated as a "Non-Confidential Employee," and must report all disclosures of sexual assault, sexual harassment, interpersonal violence, and stalking to Mason's Title IX Coordinator per University Policy 1202. If a student wishes to speak with someone confidentially, please contact one of Mason's confidential resources, such as Student Support and Advocacy Center (SSAC) at 703-380-1434 or Counseling and Psychological Services (CAPS) at 703-993-2380. Students may also seek assistance or support measures from Mason's Title IX Coordinator by calling 703-993-8730, or emailing titleix@gmu.edu.

University Resources:

- Counseling and Psychological Services: <https://caps.gmu.edu/>
- Student Health Services: <https://shs.gmu.edu/>
- Mason Square Campus Clinic: After-Hours Nurse Advice – 703-991-2831
- Mason Square Campus Clinic Location: Van Metre Hall, Room B102.
- Student Support and Advocacy Center: <https://ssac.gmu.edu/>
- Police: Emergency - Dial 911; 703-993-8070, Van Metre Hall, Room 110.
- Police escort services: 703- 993-8370.
- Sexual Assault Services: 703-993-8186, Van Metre Hall, Room 222D.
- Mason Square information: <https://masonsquare.gmu.edu>