

AVIATION LAW 151 – ADJUNCT PROFESSOR GREGORY S. WALDEN

Law 151 is a survey of aviation law, covering domestic and international law. Students will receive an introduction into all major aspects of aviation law, with special emphasis placed on government regulation of airlines, airports, and airline personnel. Students will gain a basic understanding of the structure and forms of Federal and international aviation law and regulation, and will examine current airline industry controversies such as –

What is the appropriate U.S. government response to the economic downturn in the U.S. airline industry? What effect do DOT's laws and policies have on the success of low cost airlines vis-à-vis the network or legacy carriers?

Whether international aviation should be deregulated and how – particularly with reference to the ongoing US-EU negotiations

How to resolve the problems of airport congestion and delay, which have begun to resurface with the upturn in the aviation sector and the increased use of regional jets

How far a local government may go to mitigate environmental impacts of aircraft noise or to address other local interests

The changed and still changing scheme of aviation security regulation

The course will expose students to administrative law, constitutional law, international law, Federal jurisdiction, antitrust law, and environmental law.

Materials consist of cases, statutes, treaties, regulations, and policy statements, nearly all of which will be available over the West Education Network, with the remainder distributed in class. There is no textbook. Grades will be based on a written exam at the end of the term. Class participation may earn a student a half-grade improvement.

Mr. Walden practices aviation law with the firm of Patton Boggs LLP. He served as Chief Counsel of the Federal Aviation Administration, 1988-90, and held senior positions in the U.S. Justice Department, the White House, and Interstate Commerce Commission. He is an author of the upcoming *Aviation Law – Cases and Materials*, publication expected fall 2006.

AVIATION LAW 151 – FALL 2005 SYLLABUS

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Structure of aviation law and regulation (three weeks)

- Overview of United States government structure (FAA, DOT, NTSB, TSA)
- International regulation (Chicago Convention; the Freedoms; bilaterals; ICAO; what “Open Skies” is and what it is not; cabotage, foreign ownership, right of establishment; code-sharing; European Union)

Accident investigation and litigation (two weeks)

- Domestic accident investigation (NTSB role; "probable cause"; CVR protections)
- Domestic accident litigation (potential defendants; theories of liability)
- International “accidents” (Warsaw Convention, as supplemented, and Montreal Convention)

Safety certification and regulation of air carriers and airmen (two weeks)

- Scope of FAA’s authority over aviation safety; Federal Aviation Act preemption
- Certification (types of FAA certificates for aircraft, equipment, air carriers, airmen, airports, and repair stations; use of designees)
- Regulation (APA; types of rules and policy statements; regulation of foreign air carriers)
- TSA regulation of air carriers and airports (and international convention against terrorism)
- Hazardous materials regulation

FAA enforcement (one week)

- Certificate action; emergency action; civil and criminal penalties; judicial review of emergency orders; hazardous materials enforcement
- NTSB appellate jurisdiction & appellate review in U.S. court of appeals
- Review of collateral challenges to FAA actions

Domestic economic regulation (three weeks)

- DOT statutory authorities; certification of air carriers; slots (High Density Rule)
- Unfair and deceptive business practices & unfair methods of competition – consumer protection (advertising; overbooking; disability discrimination laws)
- Anticompetitive conditions and conduct (barriers to entry; predatory conduct; mergers and acquisitions; code-sharing and marketing alliances)
- Airline Deregulation Act preemption
- Labor law (Railway Labor Act) and bankruptcy

Airports law (three weeks)

- Relationship between Federal and local governments; the proprietor’s exception; airport expansion; funding of airport construction & improvements; noise abatement authority
- FAA safety regulation of airports
- Statutory and contractual grant assurances (exclusive rights, nondiscrimination, etc.)
- Federal environmental review (NEPA, noise metrics) and judicial review of final orders
- Airport rates and charges (private rights of action; dormant Commerce Clause; Anti-Head Tax Act; DOT policy; Passenger Facility Charges) and judicial review of final orders
- FAA and DOT administrative processes to challenge fees and access restrictions