

**Automated Vehicles Law 247 – Drones & Driverless cars**  
**Syllabus – Summer 2021**  
**Adjunct Professor Gregory S. Walden**  
**Email: [gregorywalden@dentons.com](mailto:gregorywalden@dentons.com)**

**Instructor Background:** Adjunct Professor Gregory S. Walden has taught Aviation Law at the Scalia Law School since 1998 and Transportation Law at the Schar School of Public Policy at George Mason University since 2000. This marks the third summer Mr. Walden has taught Automated Vehicles Law. Mr. Walden is a co-author of *Aviation Law – Cases and Materials* (2006). 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 a number of 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 US LLP. 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 may be accessed through Westlaw. Reading assignments for each class are listed below. This list may be revised during the course, based on any new developments.

**Learning Outcomes:** Students 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. 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.

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. 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 half-grade increase based on class participation.

## **May 17 and 19 – 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 24 and 26 — Unmanned aircraft systems – drones**

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

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

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

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

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

*Sikkelee v. Precision Airmotive Corp., 2018 WL 5289702 (3d Cir.)*

*National Press Photographers Association, et al. v McCraw, et al., 2020 WL 7029156 (W.D. Tex.)*

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

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

## **June 2 -- Unmanned aircraft systems -- State tort law**

- *State and local laws*

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 (to be put on TWEN)

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

### **June 7 and 9 – Automation of cars and trucks**

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

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

NHTSA grant of temporary exemption to Nuro, 85 Fed. Reg 7826 (Feb. 11, 2020) (TWEN)

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

S. 1885 (AV Start Act) (115<sup>th</sup> Congress) (TWEN)

### **June 14 and 16 – 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)

### **June 21 and 23 – Government operation of automated vehicles**

- *Tort liability – Federal Tort Claims Act & State laws*
- *4<sup>th</sup> 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.)

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

**June 28 and June 30 – Particular issues of law and policy**

- *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)

**July 6 -- Review class and exam preparation**